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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 CR 649 (GBD)

5 TERRELL POLK,

6 Defendant.

7 -----x
8 New York, N.Y.
9 September 13, 2018
9:30 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge
13 - and a Jury -

14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
17 Southern District of New York

18 MICHAEL KIM KROUSE

NICHOLAS FOLLY

19 MAX NICHOLAS

Assistant United States Attorneys

20 RICHARD B. LIND

Attorney for Defendant

21 ALSO PRESENT:

22 JONATHAN CONCEPCION, U.S. Attorney's Office Paralegal
23 JESSICA ALVARADO, NYPD

I9d6poll

(In open court; jury present)

THE COURT: Is the government prepared to rest before the jury?

MR. FOLLY: Yes, your Honor.

THE COURT: Do you want to make a motion at the close of the government's case, Mr. Lind?

MR. LIND: Yes.

THE COURT: Why don't you formally tell me what the motion is.

MR. LIND: The motion that the government has not satisfied its burden of proof, and I think it is under Rule 29 I move to dismiss the case.

THE COURT: Does the government want to be heard at all on that motion?

MR. KROUSE: Your Honor, the government's position is that the motion should be denied. The government has introduced evidence that would if the jury credits it satisfy each of the elements of the offenses charged. There are four counts in this indictment. One is a narcotics conspiracy.

There is ample testimony from Cicero Williams that he was engaged in a drug dealing crew with Mr. Polk as well as other individuals such as Mr. Moss, Mr. Corbett and Mr. Smith. All of that testimony has been received into evidence. Mr. Williams, to be a little more detailed, testified about activities that the group did together, such as steering

I9d6poll

1 customers, supplying each other, possessing firearms that they
2 shared amongst each other that they used to protect their drug
3 territory of the all of which would go if the jury credited it
4 to the first element that there was an agreement between one or
5 more people to violate the laws of the United States, namely,
6 to distribute narcotics.

7 The two substances charged in the first count are
8 crack cocaine and marijuana. Mr. Williams testified
9 extensively about his own activity selling crack cocaine as
10 well as Mr. Moss and Mr. Corbett and as well as Mr. Polk.
11 Personally seeing Mr. Polk selling crack cocaine, supplying him
12 with crack cocaine, steering customers to him and receiving
13 customers from him.

14 As to the marijuana, there is also testimony from Mr.
15 Williams that he also occasionally sold marijuana and that one
16 member of the conspiracy, Mr. Smith, exclusively sold marijuana
17 on behalf of the crew. There is also testimony that the first
18 shooting that the government introduced evidence about, which
19 is the July 25th shooting outside 1055 University Avenue, that
20 that shooting stemmed from a dispute over who could sell
21 marijuana within that building, that Mr. Cropper was selling
22 marijuana in that building without permission which led to a
23 dispute between him and Mr. Smith and Mr. Polk intervened and
24 fired shots at Mr. Cropper and hitting him.

25 So the government as to Count One has introduced

I9d6poll

1 substantial evidence about the conspiracy and about both
2 substances charged.

3 Count Two is the substantive crack cocaine possession
4 with intent to distribute. For that the government had
5 introduced through Probation Officer Joseph Lombardo that 34
6 bags -- individual baggies which totaled around 3.5 grams of
7 crack cocaine were recovered from Mr. Polk's bedroom on the
8 nightstand next to his bed. That is sufficient evidence in the
9 government's view if the jury would credit it that all the
10 elements of that count were also satisfied, which is that
11 Mr. Polk possessed with the intent to distribute and that the
12 substance was crack cocaine, which there is a stipulation
13 between the parties on.

14 On the intent to distribute, the government has also
15 introduced evidence that when crack cocaine is distributed, it
16 is packaged in these individual twists with about .1 grams in
17 every individual bag and that aligns with what the testing
18 showed for substance that was recovered from his nightstand.

19 As to Count Three, your Honor, which is the 924(c),
20 again the government has introduced evidence of multiple guns
21 being discharged and used by Mr. Polk. There are two
22 shootings -- the July 25th shooting and the August 4th
23 shooting. The testimony from Mr. Williams is that those guns
24 were shared and held for the purpose of protecting the
25 narcotics conspiracy between him, Mr. Polk and the other

I9d6poll

1 participants in the conspiracy. So the element that the
2 firearms need to be used and carried in connection with the
3 narcotics conspiracy or were possessed in furtherance of that
4 conspiracy would be satisfied through Mr. Williams's testimony
5 if the jury credits it.

6 The enhancement that the firearm was discharged would
7 be satisfied by the testimony and video surveillance evidence
8 showing that Mr. Polk used firearms that were possessed and
9 used and carried in furtherance and in connection with this
10 narcotics conspiracy and they were discharged on those two
11 dates.

12 As to Count Four, which is the possession of
13 ammunition by a convicted felon, that has three elements and
14 two of them are stipulated to here. Mr. Polk does have a prior
15 felony conviction, and that the ammunition that was recovered
16 from 1055 University Avenue traveled in interstate commerce.
17 So the only element remaining is that Mr. Polk possessed that
18 ammunition. If the jury credits the testimony that Mr. Polk is
19 in fact the individual on the video firing the weapon, the .40
20 handgun, at Mr. Cropper and that the shell casings came from
21 that handgun, then that element would also be satisfied.

22 So the government has introduced substantial evidence
23 for each of the elements for each of the counts and therefore
24 submits that Mr. Lind's motion should be denied.

25 THE COURT: I am going to deny the motion. I find

I9d6poll

1 that there is sufficient direct and circumstantial testimony
2 including the testimony of the cooperating witness for the jury
3 to find the defendant guiling beyond a reasonable doubt if they
4 were to credit all of that testimony.

5 All of our jurors are here. Let's first wind up on
6 the jury charge. Let's start with the verdict sheet. I made
7 some changes in the verdict sheet.

8 What are the suggestions?

9 MR. NICHOLAS: We're good with what the Court did.

10 THE COURT: Does everyone have a final version?

11 MR. LIND: I have a copy of the final version. May I
12 just quickly looking at it, Judge?

13 THE COURT: Yes.

14 The main thing I changed was Question 3. It basically
15 reads, How do you find the defendant, Tyrell Polk, with respect
16 to the charge of using and carrying a firearm during and in
17 relation to or possessing a firearm in furtherance of the
18 narcotics conspiracy.

19 And then A asks: If you find the defendant guilty of
20 Count Three of the indictment, did the defendant, Tyrell Polk,
21 discharge that firearm.

22 MR. LIND: That's fine, Judge.

23 MR. NICHOLAS: I don't know if this matters, but I was
24 noticing this in Subparagraph A we had had yesterday it was
25 discharged the firearm.

I9d6poll

1 THE COURT: Yes. Going back to the statute in order
2 to make clear that the jury is relying on the firearm that they
3 find, I think it makes more sense to say "that firearm." They
4 can use two different firearms on that.

5 MR. NICHOLAS: Understood, your Honor.

6 THE COURT: That is the reason why I said that.

7 MR. NICHOLAS: Okay.

8 MR. LIND: I have two requests.

9 THE COURT: Sure.

10 MR. LIND: One is with regard to the felon in
11 possession, Judge.

12 THE COURT: Yes.

13 MR. LIND: I think there should be some language to
14 the effect that the fact that he has a prior felony should not
15 be used against him.

16 THE COURT: I have the language that you requested
17 yesterday. That language is on page 101 and the top of 102.

18 MR. LIND: Fine, Judge.

19 THE COURT: That is what I was looking for.

20 MR. LIND: One other request, Judge. Your Honor had
21 mentioned this before with regard to the prison calls, whatever
22 the other parties besides Mr. Polk say is not to be considered
23 evidence. I think there was some language to that effect that
24 your Honor was talking about.

25 Do you remember that, Judge?

I9d6poll

1 THE COURT: I remember that part of that related
2 conversation. I am not sure what you think would be an
3 appropriate instruction to give at this point with regard to
4 those conversations.

5 MR. LIND: I forget exactly what your Honor said, but
6 I agreed with it at the time. It was something to the effect
7 that it is not to be considered as substantive evidence. It is
8 sort of like their responses are really not evidence.

9 THE COURT: I am not quite sure what responses you are
10 referring to.

11 MR. LIND: Whatever the other parties to the
12 conversation said should not be considered substantive
13 evidence. I think that is what your Honor says. Maybe the
14 government has a different recollection than I do.

15 MR. KROUSE: I don't recall the Court saying that.
16 The government argued that it is substantive evidence. We're
17 introducing a phone call. Mr. Polk is on one side of that
18 phone call. That is clearly admissible. The rest of the phone
19 call is evidence of completeness. How else would the jury be
20 able to assess the meaning of the phone call and the meaning of
21 Mr. Polk's words?

22 So from the government's perspective, the entire phone
23 call is in evidence and the jury can consider it however they
24 want. Mr. Lind can of course argue that certain statements
25 made by other people are not statements made by his client so

I9d6poll

1 the jury should disregard it or whatever; but there doesn't
2 need to be any instruction about that because from the
3 government's perspective, all of these phone calls are admitted
4 into evidence.

5 Furthermore, the statements made by these people
6 Mr. Polk is adopting those statements in the course of the
7 conversation. He is responding to them. He is answering
8 questions. He is following up on statements made by other
9 people. To understand the phone call, you need to have both
10 sides of the conversation and the government feels it was
11 admitted.

12 MR. LIND: I already stipulated to the phone calls
13 coming in. The question is what is the probative value of the
14 responses. They are not coconspirators. Your Honor, I forgot
15 the exact language your Honor had used, but there was something
16 to the effect that it is like background or something to that
17 effect.

18 THE COURT: Well, I don't know of an appropriate
19 instruction here with regard to those conversations. I am not
20 sure those conversations are any different than any other
21 wiretaps or any other recorded conversations that the
22 government would engage in. All of those conversations would
23 be admissible against the defendant that he engaged in,
24 particularly to the extent that those conversations were either
25 in furtherance of the drug activity or statements by the

I9d6poll

1 defendant.

2 If there is some argument that you want to make or you
3 have some specific language that you want to propose. I cannot
4 think of an appropriate way to instruct the jury that somehow
5 they should only consider half the conversation and not
6 consider the entire conversation that the defendant was engaged
7 in, the back and forth in the conversation. I don't think
8 there is an appropriate statement for me to give to them in the
9 nature of that evidence against the defendant.

10 Did you have something else, Mr. Lind?

11 MR. LIND: No, Judge.

12 THE COURT: Government?

13 MR. NICHOLAS: The only thing I want to take back up
14 if I could, your Honor, is yesterday we had identified the
15 language what is now page 35 of the Court's instruction saying
16 that we would challenge it. It is the language in the middle
17 of the page 35 that a witness who believes that he or she may
18 be able to obtain their own freedom or receive a lighter
19 sentence by giving testimony favorable to the U.S. Attorney has
20 a motive to testify falsely. The Court's law clerk was kind
21 enough to hand me the Sand and point me to 7-11, where I think
22 some of that language comes from.

23 We would submit that the Sand Instruction is 7-5 on
24 accomplice testimony is sufficient for this. I think that the
25 statement in the jury charge that a witness who believes that

I9d6poll

1 in substance they may be able to get a lighter sentence by
2 giving favorable testimony has a motive to testify falsely
3 falls in the bucket of argument that Mr. Lind can make.

4 As far as Judge Sand's treatise goes, the instruction
5 that the Court is taking from 7-11 starts with -- the second
6 sentence of that instruction is that there is evidence that the
7 government agreed to dismiss some charges against the witness.
8 I don't think we dismissed charges against Mr. Williams. It is
9 a cooperation agreement. He has pleaded guilty. It is almost
10 the opposite. He had to plead guilty a bunch of things that he
11 wouldn't otherwise have had to pled guilty to. Had he not
12 cooperated, we wouldn't even have known about them.

13 THE COURT: Well, that doesn't change whether or not
14 the witness is attempting to obtain his own freedom or receive
15 a lighter sentence.

16 MR. NICHOLAS: The witness certainly wants a lower
17 sentence. No question about that.

18 THE COURT: Or wants to obtain his freedom.

19 MR. NICHOLAS: Agreed. No question about that. He
20 testified to that. That is obviously on the record. Mr. Lind
21 will argue from that. We don't dispute that.

22 Our argument is that the language in 7-11 that the
23 Court is taking from the bottom of 7-11 comes from an overall
24 instruction that doesn't apply here because this isn't a case
25 where we agreed to dismiss some charges against the witness.

I9d6poll

1 It is the opposite. So we think he has had to take additional
2 charges as a cooperator. And I don't know that it works that
3 way -- it does work that way here.

4 THE COURT: I don't think that changes anything. The
5 government has given the witness some incentive to believe that
6 he can obtain a lighter sentence or he can obtain his freedom
7 by cooperating with the government.

8 MR. NICHOLAS: True. As he testified what the
9 government has instructed him is that in order to get a 5K
10 letter he has to tell the truth. The government hasn't said to
11 him, Testify in a way that helps us and you will get a letter.
12 He testified to that on the stand. He said I have been told
13 that I have to tell the truth. Respectively we don't think the
14 7-11 instruction fits here. We think the 7-5, accomplice
15 testify, does.

16 The 7-5 instruction, your Honor, I printed it out. I
17 can hand it up and Mr. Lind has it. It is in the book
18 obviously.

19 The 7-5 instruction in Sand has a full paragraph that
20 says, You should ask yourselves whether an accomplice witness
21 would benefit more by lying or telling the truth. Was their
22 testimony made up in any way because they are hoping they will
23 receive favorable treatment by testifying falsely, or did they
24 believe that their interest would be best served by testifying
25 truthfully, and then it goes up. So it tees it up.

I9d6poll

1 THE COURT: Was that part of your request to charge?

2 MR. NICHOLAS: I can check, your Honor. I want to
3 give the Court back a copy of Sand, too. I will hand it up to
4 your Honor's law clerk.

5 Your Honor, it was at pages 54 to 55 of our requested
6 charge. We can hand it up if the Court doesn't have the ECF
7 open.

8 THE COURT: I have it.

9 MR. NICHOLAS: 54 to 55. I think that generally
10 tracks Sand 7-5. If the Court preferred 7-5 to what we have in
11 our request to charge, then that's fine with us. We just
12 object to seven-11.

13 THE COURT: You say as opposed to 7-11 is what we
14 have?

15 MR. NICHOLAS: Yes. The language the Court has now
16 tracks 7-11. We would ask that it either track 7-5 or that it
17 track what we proposed and submitted in other trials, which is
18 54 to 55 of our requested charge.

19 THE COURT: Mr. Lind, what is your position?

20 MR. LIND: I don't see the part in your Honor's
21 instructions that they object to.

22 MR. NICHOLAS: I can show it to Mr. Lind, your Honor.

23 THE COURT: All right.

24 (Pause)

25 MR. LIND: Judge, the sentence that they want out I

I9d6poll

1 have seen in virtually every charge.

2 THE COURT: What you are asking for I think is in
3 essence already in my charge. The language that you are
4 requesting is almost word for word out of 7-5.

5 MR. NICHOLAS: Then we think that is sufficient, your
6 Honor, to get the point across to the jury that a cooperator's
7 testimony has to be scrutinized carefully and you should ask
8 yourself: Does he have an incentive to lie or incentive to
9 tell the truth. If that is already communicated to them, then
10 we don't think the sentence that -- I would point your Honor to
11 page 55 of our requested charge we have the question -- we have
12 a paragraph that ends with the question: Or did the witness
13 believe that his interest would be best served by testifying
14 truthfully.

15 THE COURT: We already have the language, You should
16 request ask yourself whether the cooperating witness would
17 benefit by lying or telling the truth. If you believe the
18 witness was motivated by personal gain, consider if the
19 motivation was one that would cause him or her to lie, or was
20 it one that would cause him or her to tell the truth if this
21 motivation colored his testimony.

22 MR. NICHOLAS: Is the Court reading from the Court's
23 charge?

24 THE COURT: Yes.

25 MR. NICHOLAS: So, your Honor, we would think that,

I9d6poll

1 which I think probably tracks 7.5, is enough. Look, I can only
2 speak from personal experience. The part from 7-11 that is in
3 there later and that -- sorry, earlier on page 35 of the
4 Court's charge we're objecting to one sentence.

5 THE COURT: Right.

6 MR. NICHOLAS: I haven't seen that in charges in the
7 trials I have done. I know Mr. Lind has done more than I have.
8 We're asking to strike that one sentence.

9 MR. LIND: I object to that, Judge. I think that is
10 perfectly appropriate. It is put in every charge I have seen.

11 THE COURT: I have modified the sentence from "a
12 witness who realizes" to "a witness who believes."

13 MR. LIND: That's find.

14 THE COURT: I don't think it is appropriate to say
15 that the witness realizes he can get a benefit because the
16 government's argument is he never gets the benefit. So if he
17 believes that he could obtain his freedom by giving testimony
18 to the U.S. Attorney, that is a motivation to lie. That is
19 basically what it says. It doesn't mean he was going to lie.
20 It might be a motivation for him for the jury to consider.

21 MR. NICHOLAS: I think that that reasoning includes
22 the assumption that lying would be favorable to the U.S.
23 Attorney.

24 THE COURT: No, not favorable to the U.S. Attorney.
25 Favorable to the witness if they can deceive the U.S. Attorney.

I9d6poll

1 MR. NICHOLAS: To me it doesn't follow that if a
2 witness may believe that he or she may be able to obtain his
3 freedom or receive a lighter sentence by giving favorable
4 testimony that that creates a motive to testify falsely.
5 Because in this case the truthful testimony does inculcate the
6 defendant and is favorable to the government.

7 THE COURT: Well, it doesn't say truthful testimony.
8 It says favorable testimony.

9 MR. NICHOLAS: Right.

10 THE COURT: It assumes that the favorable testimony is
11 not truthful.

12 MR. NICHOLAS: Right. But that is an assumption that
13 I think is wrong here. It is argument. Mr. Lind can certainly
14 get up and argue, Look, Williams is just going to say whatever
15 he thinks the government wants to hear. He doesn't care what
16 is true and what is not. That is argument.

17 I think having it here confuses the issue. The Court
18 already has the 7-5 in here. That is sufficient. I think the
19 part of the Court's charge is what is normally in jury charges.
20 This sentence jumped out at me because I haven't seen it in a
21 charge. And I think it comes from a charge in Sand that is
22 predicated in part on a plea agreement where the government has
23 agreed to dismiss charges against a witness.

24 THE COURT: I don't agree with that. It doesn't say
25 anything about dismissing charges.

I9d6poll

1 MR. NICHOLAS: I think the charge in Sand at 7-11
2 does. I don't have it in front of me, but I think the top of
3 7-11 says that the government in this case has agreed to
4 dismiss certain charges against the witness and goes on from
5 there. That is not the context for Mr. Williams because we
6 haven't agreed to dismiss anything. It's the opposite.

7 THE COURT: I am not sure what the government has
8 agreed not to charge him with. There are a lot of things that
9 he has confessed to that the government has agreed not to
10 charge him.

11 MR. NICHOLAS: But that is all in his cooperation
12 agreement. The issue that I think arises is the context for
13 7-11 in Sand is almost the opposite of what has happened here.
14 Here he has had to eat a bunch of charges because he is
15 cooperating and had he not cooperated --

16 THE COURT: 7-11 doesn't give him immunity.

17 MR. NICHOLAS: I agree, your Honor. My recollection
18 of 7-11 is the first two sentences include the concept of the
19 government has agreed to dismiss charges against the witness.
20 It is not like we're dismissing anything against him.

21 THE COURT: What difference would that make?

22 MR. NICHOLAS: I just point it out that that is the
23 context for the language from that charge.

24 THE COURT: How does that make that language even more
25 or less relevant?

I9d6poll

1 MR. NICHOLAS: Well, if we were dismissing charges
2 against Williams, I think that would create a more a bias
3 situation.

4 THE COURT: Why? I am not sure I agree with it. In
5 this case the witness has a greater incentive if you ask me to
6 give testimony that is favorable to the government because he
7 knows if he doesn't do that, the government can withhold the 5K
8 letter. I am not sure.

9 MR. NICHOLAS: Maybe I can propose a compromise,
10 because I don't disagree with the fact --

11 THE COURT: This is an instruction that I have given
12 maybe 30 times and it hasn't been a determinative factor in the
13 case.

14 MR. NICHOLAS: I understand, your Honor.

15 THE COURT: It is a standard instruction that has been
16 approved by the Second Circuit. Mr. Lind has a right to argue
17 that this guy has an interest in the outcome of this case. He
18 hopes that he can curry favor with the government so the
19 government will be nice to him and let him go.

20 MR. NICHOLAS: I agree that he has an right to argue
21 that. We would be happy in keeping in this sentence at page 35
22 of the Court's charge, The witness may believe that he may be
23 able to obtain his freedom or get a lighter sentence by giving
24 testimony that is favorable. The problem we have with the
25 equation of that with motive to testify falsely. I don't know

I9d6poll

1 what the basis is to equate favorable testimony with a motive
2 to lie, because there is nothing to indicate that lying would
3 be favorable to the government.

4 MR. LIND: Judge, I am sorry. I apologize. May I
5 interrupt?

6 I cannot recall any case where that language is not
7 in. For the government to say I can make these arguments, that
8 is one thing for me to make an argument. The Court will
9 instruct the jury that whatever I say is not evidence. It is
10 meaningless. If it is in the charge, it a completely different
11 thing. Your Honor, I totally and vigorously object to this.
12 It is in every charge I experienced that there is a motive to
13 lie.

14 THE COURT: I think particularly as I modified that
15 language it is appropriate language for the jury to consider.
16 Both sides can argue obviously what they will about whether or
17 not he has a greater motive to tell the truth or a greater
18 motive to lie. That is what the issue is always about.

19 I think Mr. Lind wants this in, I am going to leave it
20 as it has been modified by me and the parties can argue what
21 they will.

22 MR. NICHOLAS: Thank you, your Honor.

23 THE COURT: Anything else?

24 MR. NICHOLAS: Not from the government, your Honor.

25 THE COURT: I bolded the changes that I made. As I

I9d6poll

1 say on 35 I change that word to "believe." I am going to drop
2 44 and 45, specific investigative techniques. 55 I am
3 dropping -- most of 55 and 56. I made a slight change to what
4 the government requested. I just thought it was more
5 appropriate in another section. On page 71 I am probably going
6 to drop the "for example." The language in the same paragraph
7 that says, "A conspirator's liability is not measured by the
8 extent or duration of his participation," the language that the
9 government wanted that "the defendant need not be a member of
10 the conspiracy for the entire time that it exists," I put that
11 right after that.

12 MR. NICHOLAS: Understood, your Honor.

13 THE COURT: I took out "brandished" on page 87 and 89.

14 As I indicated, Mr. Lind, on 101 I put in the language
15 that you requested.

16 All the jurors have been waiting for us. Are we ready
17 to proceed with summations?

18 MR. KROUSE: Your Honor, just to put on record there
19 is a CD, Government Exhibit 900. On that CD is what is marked
20 as 900 A, which is the video from the cell phone of the three
21 men driving in a car. That has been published to the jury
22 multiple times, including on Mr. Lind's cross-examination. In
23 reviewing the transcript, it appears that 900 A was not
24 separately admitted as an exhibit.

25 THE COURT: A was what?

I9d6poll

1 MR. KROUSE: That is just the video.

2 THE COURT: I don't have a recollection that you
3 offered the telephone in evidence.

4 MR. KROUSE: We did not, no. The telephone is not in
5 evidence, the physical telephone itself. 900 is a CD. That is
6 in. 900 A is on that CD. We didn't separately offer 900 A.

7 THE COURT: You can offer it.

8 MR. KROUSE: We'll stand up and say the government
9 offers 900 A, which has previously been shown to the jury.

10 MR. LIND: Was there a conversation on that or was it
11 just a photo?

12 MR. KROUSE: Just the video.

13 MR. LIND: I think that is in already; right?

14 MR. KROUSE: It is not according to the transcript.

15 THE COURT: Okay.

16 MR. KROUSE: We'll rest after that, your Honor.

17 MR. LIND: Judge, may I take five minutes to get some
18 water?

19 THE COURT: Three minutes.

20 What are you getting?

21 MR. LIND: Water.

22 THE COURT: I will give you water. You can have my
23 water. Do you want the whole pitcher?

24 MR. LIND: No.

25 THE COURT: The only other matter is whether the Court

I9d6poll

1 wants to inquire about Mr. Polk's decision whether or not to
2 testify.

3 MR. LIND: Let me talk to him.

4 THE COURT: Do you intend to call any witnesses on
5 behalf of Mr. Polk?

6 MR. LIND: No.

7 May I also talk to him about his testimony if
8 possible?

9 THE COURT: Sure.

10 (Pause)

11 MR. LIND: Mr. Polk is not going to testify. I have
12 spoken to him about it, Judge. That's our decision.

13 THE COURT: I will consider your motion renewed after
14 you have rested.

15 Let's bring out the jury and have both sides rest and
16 we'll move forward in summation.

17 (In open court; jury present)

18 THE COURT: Anything further on behalf of the
19 government?

20 MR. KROUSE: Your Honor, the government offers
21 Government Exhibit 900 A.

22 THE COURT: Any objection?

23 MR. LIND: No objection.

24 THE COURT: That is admitted into evidence.

25 (Government's Exhibit 900 A received in evidence)

I9d6poll

Summation - Mr. Folly

1 THE COURT: Anything further?

2 MR. KROUSE: No, your Honor. The government rests.

3 THE COURT: Mr. Lind, are you going to call any
4 witnesses?

5 MR. LIND: No, your Honor. The defendant rests.

6 THE COURT: Ladies and gentlemen, both sides have
7 rested. We'll move onto the closing arguments of the lawyers.
8 Let me remind you two things before we begin. One, what the
9 lawyers say is not evidence; and two, it is your recollection
10 of the testimony that controls. With those two reminders,
11 we'll start with the closing argument by the government I
12 believe given by Mr. Folly.

13 MR. FOLLY: On July 25th, 2015, Terrell Polk, the
14 defendant, shot Euro on the sidewalk in front of 1055
15 University Avenue in the Bronx, right here on this sidewalk
16 where families and young children had been walking just minutes
17 before Polk shot Euro. Polk shot Euro, whose real name is
18 Joaquin Cropper five times, blowing two holes through Cropper's
19 knee as he tried to run for his life. You saw the live video
20 of that shooting at this trial and you saw Euro limping after
21 he was shot.

22 Euro made the mistake of trying to sell drugs at 1055
23 University Avenue without the permission of Polk or anyone in
24 Polk's crew so Polk just shot him just like that five times.
25 He did it with other members of his crew. Kevin Corbett joined

I9d6poll

Summation - Mr. Folly

1 right in and pulled out his revolver and also shot at Euro. He
2 was also there with Cicero Williams and Timothy Smith, two more
3 members of this violent drug crew.

4 Polk didn't even wait two weeks before he committed
5 another shooting in the same neighborhood. You learned at this
6 trial that just 10 days later on August 4th Polk chased another
7 crack dealer named Ryan into a store. Ryan was with a
8 bystander who came into this court and testified, Juan Rios.
9 You heard how Ryan and Rios hid in the back of that store in a
10 storage room. They leaned against the door and they tried to
11 keep Polk out; but, ladies and gentlemen, that is a hard thing
12 to do when someone is chasing you with a sawed-off shotgun. So
13 Polk just blew a hole straight through the door and he hit Ryan
14 and he also hit Rios with the blast from that shotgun and then
15 he ran out of the store leaving behind him a pool of blood.

16 Ladies and gentlemen, these two shootings tell you
17 what this case is all about. They show you that Polk and his
18 crew carried guns. They show that you Polk and his crew shot
19 rival drug dealers. They show you that Polk and his crew were
20 willing to do whatever it took to protect their drug turf.

21 Now, this has been a short trial, but you have seen
22 and heard a lot of evidence throughout this week. This morning
23 I am going to walk through that evidence with you and discuss
24 how the evidence shows you beyond a reasonable doubt that Polk
25 is guilty as charged. There are four charges in this case and

I9d6poll

Summation - Mr. Folly

1 we're going to go through each of them one by one and show you
2 how the evidence proves the defendant's guilt. Let's start at
3 the beginning. Let's start with Count One.

4 Count One charges Polk with being a member of a
5 narcotics conspiracy. The conspiracy was to distribute crack
6 cocaine and marijuana at some point during the period of 2013
7 through 2017. Later today Judge Daniels is going to give you
8 the instructions on the law and you should follow those
9 instructions, but I expect that Judge Daniels will tell you
10 that Count One has two basic elements. First, that a narcotics
11 conspiracy existed and second that the defendant knowingly
12 joined that conspiracy. I expect Judge Daniels will tell you
13 that conspiracy is simply an agreement to break the law.

14 Now, how do you know that Polk was a member of this
15 drug conspiracy? I expect that Judge Daniels will tell you
16 that the coconspirators don't typically sit around a table and
17 write out a written agreement to break the law. That is just
18 silly. Your common sense tells you that drug dealing
19 operations don't work that way. No one is sitting around
20 drawing up contracts about how they are going to sell drugs
21 together. So you will need to look at the actions of the
22 members of Polk's crew and Polk to understand how this
23 conspiracy worked; and their actions, ladies and gentlemen,
24 speak louder than words.

25 You have seen how Polk's crew control the drug sales

I9d6poll

Summation - Mr. Folly

1 at 1055 University Avenue and throughout the Highbridge public
2 housing protects. They controlled that area through violence
3 and you have seen some of that violence on video. Polk's crew
4 decided who could sell in their territory. They supplied each
5 other with drugs. They shared customers. They shared guns and
6 they protected their turf together.

7 So let's go through some of that evidence you heard
8 about Polk's drug crew. Who were the members of the drug
9 conspiracy in this case? Polk; Moss, who they called Buddha
10 Man; Cicero Williams, who you heard from at this trial; Kevin
11 Corbett; and Timothy Smith. Those were the members of this
12 crew. They controlled the drug sales at 1055 and throughout
13 the Highbridge projects, and you cannot sell in this area if
14 you were an outsider.

15 The evidence you saw throughout this trial showed you
16 exactly how this crew operated. You saw videos. You saw the
17 crack right next to Polk's bed. You saw more crack from the
18 undercover buys and you also saw guns that this crew used in
19 their drug operation. During this trial you also heard from
20 one of the key members of this drug conspiracy, Cicero
21 Williams. He gave you an inside view into how this conspiracy
22 operated.

23 Williams was from Highbridge and he had known Polk and
24 he had known Moss his entire life. He had sold drugs with both
25 of them for years. He was a member of this crew and he

I9d6poll

Summation - Mr. Folly

1 explained to you at length and in detail about how Polk and the
2 other members of this crew would sell drugs and carry guns to
3 protect their drug operation.

4 Now, I expect when Mr. Lind gets up here and speaks to
5 you, he is going to tell you that you shouldn't believe
6 Williams. Ladies and gentlemen, of course he is going to say
7 that. He is going to say that because Williams's testimony is
8 absolutely devastating against Polk. It demonstrates Polk's
9 guilt on every count in this case. But, ladies and gentlemen,
10 when you look at all of the other evidence in this case, you
11 will see that it backs up Williams over and over again.

12 Think about how often you saw evidence throughout this
13 trial that backed up the things that Williams told you.
14 Williams told you that Polk was a crack dealer and one of the
15 very first things you saw at this trial on the first day was
16 the crack that was seized next to Polk's bed. Williams told
17 that you Polk shot Euro because Euro was selling marijuana at
18 1055 on the Tory that Polk and his crew controlled. Then you
19 saw that shooting on video, ladies and gentlemen, and you saw
20 the bags of marijuana that were found on Euro that same night.

21 (Continued on next page)

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I9DAAPOL2

Closing Statement - Folly

1 MR. FOLLY: Williams told you that Polk confessed to
2 him about shooting Ryan with the shotgun. And you heard from
3 the victim about that same shooting who described it to you
4 just like Williams did because Polk had told Williams exactly
5 how it went down. These are just a few examples and we'll go
6 through more in more detail in a few minutes. But Williams
7 gave you an inside view into how this drug operation worked and
8 you saw that Polk was right at the center of it.

9 Now as you saw, the conspiracy itself was very simple.
10 Terrell Polk, Jamel Moss, Timothy Smith, Kevin Corbett and
11 Cicero Williams all worked together to sell drugs. They did it
12 in Highbridge right where they grew up.

13 Here are Government Exhibits 202 and 204. And
14 Williams explained to you that this is where Polk, Moss,
15 Corbett, Smith and Williams all sold drugs. This was their
16 territory. They controlled this area. They sold crack cocaine
17 and as you heard, Smith also sold marijuana.

18 It wasn't just Williams who told you about this drug
19 territory. Remember Detective Prior's testimony about the
20 undercover buy she did in May 2013. She went to an apartment
21 in 1055 University Avenue to buy crack and who was there?
22 Jamel Moss and Kevin Corbett. Kevin Corbett answered the door
23 and Jamel Moss who the UC knew as "Buddha" was there as well.
24 Then the next time Detective Prior went to 1055 University
25 Avenue Moss sold her the crack himself right here, right by

I9DAAPOL2

Closing Statement - Folly

1 this 1055 University Avenue gate.

2 Now you'll remember that Polk was in jail during this
3 time and he wasn't out until March 2014. That's when he joined
4 this conspiracy. But this is where the conspiracy was
5 operating from the very beginning. This was always their turf
6 and these were always the members who were involved. And it's
7 not just Williams and it's not just Detective Prior who showed
8 you who the members of this conspiracy were and where they
9 operated. You even have video evidence of it.

10 On July 25, 2015 you saw four members of this drug
11 crew right here on this video during the Euro is shooting.
12 There is Polk. He's got his gun raised. He's shooting at
13 Euro. There's Williams in the car, the silver Camry on the
14 left. There's Tim Smith in the black shirt and there's Kevin
15 Corbett in the striped shirt with the blue hat. Then just two
16 days later after Polk shot Euro here they are again driving
17 around in the very same car that Polk and Williams drove to
18 that shooting. Polk is driving again. Tim Smith is in the
19 passenger seat and Kevin Corbett is in the backseat. Polk is
20 together with two of the very same guys just two days after
21 they shot Euro driving the exact same car.

22 Next, later that month, later in August about a month
23 after the Euro shooting you heard from Sergeant Schoefer who
24 told you about the car stop. Who was in that car, ladies and
25 gentlemen? Who was in that car with a loaded gun? Polk was

I9DAAPOL2

Closing Statement - Folly

1 the driver and once again he's in the car with Kevin Corbett
2 and Timothy Smith and in the back of that car is a loaded .9
3 millimeter pistol.

4 And also remember those prison calls you listened to
5 during the trial? Those were Polk's prison calls. We'll come
6 back to those and go through them in a little more detail. But
7 remember Polk and Tim, how they were talking about how Tim
8 needed Polk back out there, how Tim needed Polk out of jail and
9 back on the streets. And you know exactly why. Because Polk
10 was willing to shoot for Tim. He was willing to protect him.
11 He was willing to help Tim handle his drug disputes with rivals
12 like Euro.

13 And you know what else is on those calls. Polk is
14 talking about Buddha and you know who Buddha is. That's Jamel
15 Moss right there, another member of this crew. And he's also
16 talking about Kevin. And you know who Kevin is. That's Kevin
17 Corbett, another member of this crew who helped Polk shoot
18 Euro.

19 Ladies and gentlemen, Polk is not just reading names
20 out of the phone book. It's not a coincidence that the people
21 he is talking about are all members of this drug conspiracy.

22 So ladies and gentlemen, the testimony by the
23 witnesses in this case and the other forms of evidence you've
24 seen throughout this trial tell you that Polk, Williams, Moss,
25 Corbett and Smith were all members of this drug conspiracy.

I9DAAPOL2

Closing Statement - Folly

1 Now, what are some of the ways that the members of
2 this conspiracy actually worked together to sell drugs? You
3 heard about steering. You learned about how members of this
4 drug crew would steer customers to each other. Williams told
5 you that if one member of this crew ran out of drugs they would
6 send that customer to other members of the crew.

7 Ladies and gentlemen, they're not doing this out of
8 charity. They're doing this because they're working together
9 in a drug conspiracy. That's them having each other's backs.
10 Williams also explained to you that if a member of this drug
11 crew ran out of drugs they would help supply each other. For
12 example, Williams told you that in 2014 and 2015 he supplied
13 Polk with crack four to five times with an average of 15 to 20
14 grams each sometime. That means that Williams, just Williams
15 supplied Polk with between 60 and 100 grams of crack.

16 Before I go any further I want to briefly discuss the
17 issue of drug weight because you are going to see in the jury
18 charge one of the questions is "How much crack was involved in
19 this conspiracy"? You'll be asked to choose one of three
20 levels. Less than 28 grams of crack, more than 28 grams of
21 crack or more than 280 grams of crack. And I expect that Judge
22 Daniels is going to tell you that you should consider the crack
23 that Polk sold as part of this conspiracy and also the crack
24 that was sold by his co-conspirators as part of that conspiracy
25 if it was reasonably foreseeable to Polk.

I9DAAPOL2

Closing Statement - Folly

1 Here, you easily get weight beyond 280 grams. This is
2 basic math. First, we just discussed the 60 to 100 grams of
3 crack that Williams sold to Polk when Polk ran out. That right
4 there just based on the drugs that Williams sold to Polk is
5 already more than 28 grams. It's way more than 28 grams. So
6 you're already in the second level right there just based on
7 what Williams sold to Polk.

8 And you know that this conspiracy involved way more
9 crack than just what Williams gave to Polk. There were four
10 members of this crew who were all selling crack, Williams,
11 Moss, Corbett and of course Polk. And Williams explained to
12 you that members of this drug crew were selling crack around
13 the clock. This was a seven day a week job. They were always
14 open for business. On average just Williams himself was
15 selling between 100 and 150 grams of crack every month.

16 So what does all this mean? What is all this math
17 about? It means that if you just take the most conservative
18 amount of drugs that just Williams was selling in a period of
19 two months, just two months and you add that to the crack that
20 Williams gave to Polk, you're already over 30 grams of crack.
21 You are already up to the third level just with those two
22 things. And that doesn't even count all of the other months
23 that this crew was selling crack throughout this conspiracy and
24 it doesn't even count all of the other crack that the other
25 members of this crew were also selling.

I9DAAPOL2

Closing Statement - Folly

1 So your common sense tells you that Polk and the other
2 members of this crew, ladies and gentlemen, would not need an
3 arsenal of guns, a shotgun, a revolver, handguns, an assault
4 rifle, if they were selling a couple grams of crack. It
5 doesn't make any sense, ladies and gentlemen. You would not go
6 through all that trouble and carry around all those guns if you
7 were just selling a few grams of crack. So you know that Polk
8 sold way more than 280 grams of crack during this conspiracy.

9 So we've talked about steering. We've talked about
10 supplying. We've talked about sharing customers. But the
11 members of this drug conspiracy also worked together at sharing
12 guns. You've seen and heard a lot of evidence about guns at
13 this trial. You know by now that guns are an essential part of
14 how this drug crew operated.

15 They used those guns to protect their territory. The
16 July 25, 2515 shooting is a perfect example. Polk shot at Euro
17 on that day because Euro was selling in their drug turf. And
18 you heard about all of the other ways that this crew used and
19 carried guns in order to protect themselves from other drug
20 dealers who wanted to harm them or who wanted to steal their
21 turf.

22 So ladies and gentlemen, Polk was in a conspiracy with
23 Moss, Corbett, Smith and Cicero Williams to sell drugs. That
24 conspiracy was ongoing and it involved way more than 280 grams
25 of crack. The drug operation was so important to Polk and the

I9DAAPOL2

Closing Statement - Folly

1 other members of this conspiracy that they were willing to
2 shoot rivals in order to protect that operation, in order to
3 protect their turf. That's Count One. That's the evidence
4 that shows you the defendant is guilty of Count One.

5 Now there's a second drug count in this case which is
6 Count Two. This count is very straightforward. I expect Judge
7 Daniels will instruct you that it has two elements.

8 First, that on or about February 3, 2017, Polk
9 intentionally and knowingly possessed crack cocaine with the
10 intent to distribute it.

11 And second, that the substance involved was in fact
12 cocaine base.

13 There is no dispute at all in this case about the
14 second element. You saw the stipulations to that at trial.

15 There is no dispute that what's in this bag, ladies
16 and gentlemen, is crack. So there's only one element left for
17 this count and that's whether Polk actually possessed that
18 crack with the intent to distribute it.

19 Ladies and gentlemen, of course he did. Of course he
20 possessed that crack with the intent to distribute it. It was
21 found right next to his bed in his apartment. And I expect
22 Judge Daniels will explain to you that Polk did not need to
23 have had actual physical possession of the crack to be guilty
24 of this count. In other words, that crack did not literally
25 have to be in his hand when Officer Lombardo happened to show

I9DAAPOL2

Closing Statement - Folly

1 up at his apartment. It's enough that Polk had the ability to
2 exercise substantial control over that crack and here Polk
3 clearly did. It was in his apartment. It was in his bedroom
4 and it was right next to his bed. So he could pick it up and
5 he could go sell it any time that he wanted. And that's why it
6 was there. So Polk obviously possessed that crack.

7 Let's be clear. He didn't possess it by accident. He
8 possessed it so that he could sell it. All of the evidence
9 you've heard throughout this trial tells you that and so does
10 your common sense. Polk was a crack dealer. And the twists of
11 crack next to his bed were packaged so that he could sell them
12 to his customers. You saw exactly how that crack was packaged,
13 small twists of crack or hits of crack right inside of the bag.
14 Officer Lombardo told you that there were dozens of these small
15 twists inside of that bag. And you also heard from Williams
16 who told you that this is exactly how crack is packaged when
17 it's getting ready to be sold to customers. So this count is
18 easy, ladies and gentlemen. Polk possessed the crack next to
19 his bed on February 3, 2017, so that he could sell it to
20 customers. He's guilty of Count Two.

21 So those are the drug counts. Now I am going to move
22 on and discuss the gun and the ammunition counts. But as I do
23 that, keep in mind that the evidence of the gun and ammunition
24 counts is also powerful evidence that Polk was in a drug
25 conspiracy because the reason that Polk was using and carrying

I9DAAPOL2

Closing Statement - Folly

1 all these guns was in order to protect his drug turf.

2 Let's start with Count Three. This count is about
3 Polk using and carrying guns, guns that you know and that you
4 saw were fired.

5 Count Three has three elements.

6 First, that at some point between 2013 and 2017, Polk
7 used or carried a firearm or any combination of those acts.

8 Second, that Polk used or carried a firearm during and
9 in relation to the drug trafficking conspiracy charged in Count
10 One.

11 And third, Polk acted knowingly, which I expect Judge
12 Daniels will tell you just means that he knew what he was
13 doing. In other words, that he took those actions in question,
14 deliberately and voluntarily.

15 Now, we're also going to ask you to find that the guns
16 that Polk had were discharged at some point. In other words,
17 were any of the guns that Polk kept as a part of his business
18 as a drug dealer ever discharged? The answer is obviously,
19 yes. You know that for so many different reasons and we'll
20 discuss them in just a minute. You know without question that
21 Polk used and carried guns. You've seen overwhelming evidence
22 throughout this trial of Polk's use of guns. This crew had an
23 arsenal of guns. We've talked about them, a .40 caliber
24 pistol, a revolver, a sawed-off shotgun, an assault rifle and a
25 .9 millimeter handgun.

I9DAAPOL2

Closing Statement - Folly

1 The first way you know that Polk carried and used
2 those guns is because you saw it yourself at this trial. You
3 saw Polk fire the .40 caliber pistol in Euro. You saw Kevin
4 Corbett fire the revolver at Euro in the same video. Then you
5 saw and heard evidence about Polk using a shotgun to shoot at
6 Rios and Ryan just ten days later. Then you also saw the .9
7 millimeter pistol that was recovered from Polk's car later that
8 same month. So you know that guns were an essential part of
9 how Polk's crew operated. They used them to protect their
10 territory.

11 The July 25, 2015 shooting of Euro is the perfect
12 example of this. This entire shooting, ladies and gentlemen,
13 is on video. At 12:22 in the morning on July 25, 2015, here
14 you see Polk arriving in this car at 10:55 University Avenue
15 with Cicero Williams. Polk gets out of that car and
16 immediately goes up to Euro to confront him. You see Polk
17 walking there approaching Euro. Polk is animated. You can
18 tell by his body language he's upset. Let's continue. Look at
19 his body language. Why is Polk upset? Why is he here yelling
20 at Euro in middle of the night?

21 Ladies and gentlemen, he's not talking to Euro about
22 the weather. You know exactly what he is saying to Euro
23 because Williams told you Williams was there but also because
24 of your common sense when you watch this video. He's saying,
25 Get off my turf. That's what he's saying. He's saying, If you

I9DAAPOL2

Closing Statement - Folly

1 don't stop selling drugs here we're going to have a problem.
2 And Euro is about to find out just how serious Polk is when he
3 says that, just how serious Polk is about protecting his drug
4 turf.

5 Keep something in mind. Polk sold crack, not weed,
6 not marijuana. But Timothy Smith was a part of this drug crew,
7 sold marijuana in 1055 University Avenue and Polk had Smith's
8 back just like that prison call showed you. These guys
9 protected their turf together. So Terrell Polk had no problem
10 pulling out his gun and handling this dispute with Euro
11 shooting him five times to send a message that no one was going
12 to sell in 1055 University Avenue without this crew's
13 permission. So let's go back to this video.

14 You remember how this plays out. Williams understands
15 what's about to happen so what does he do? He gets back in the
16 car. He knows there's cameras here and he's right. And within
17 less than a minute, two more members of this crew, who by now
18 you are very familiar with, show up. There's Kevin Corbett in
19 the striped shirt talking to Polk. There's Tim Smith right
20 behind him in the black shirt. Williams told you who they were
21 but you also saw photos taken from Timothy Smith's phone on the
22 same day of Smith and Corbett. And they were wearing the exact
23 same clothes that they're wearing in this video. That's
24 Government Exhibits 905 and 904.

25 And when you watch this video, ladies and gentlemen,

I9DAAPOL2

Closing Statement - Folly

1 it's obvious these guys are together. They're in a group.
2 Corbett goes straight up to Polk and starts talking to him.
3 And in a few seconds in this video you'll see that Corbett
4 joins him. He pulls out his revolver and starts shooting at
5 Euro alongside Polk.

6 You're seeing live evidence of a drug crew protecting
7 its turf. And you remember what happens next. Polk takes out
8 his .40 caliber pistol and he squeezes the trigger. At first
9 nothing happens. Everyone seems a little confused. You even
10 see Euro completely freeze on this video. He doesn't start
11 running because nothing has come out of the gun yet. So Polk
12 turns to Williams and asks, what's wrong with the gun. And
13 Williams tells him, you need to cock the gun back. In other
14 words, you need to put a bullet in the chamber before you can
15 start shooting. And that's exactly what Polk does. He puts a
16 round in the chamber and he starts to shoot at Euro. And he
17 doesn't just shoot him once. He shoots him five times.

18 (Video playing)

19 And as I said before, it's not just Polk. Corbett's
20 right there next to him shooting as well. And you know what
21 the effects of this shooting were, ladies and gentlemen. You
22 saw Euro limping on that video after the shooting and you saw
23 his hospital records and you saw that he had two holes in his
24 knee from this shootout. You also saw the shell casings, the
25 shell casings that were recovered from this shooting.

I9DAAPOL2

Closing Statement - Folly

1 So there's only one question that's left about this
2 shooting whether the shooter on that video is Terrell Polk.

3 Ladies and gentlemen, of course that's Terrell Polk.
4 You've sat through this trial and you know that any suggestion
5 that that is not Terrell Polk on this video is completely
6 absurd. You had an eyewitness who came into this courtroom and
7 told you that Polk committed this very shooting, that he saw
8 Polk with his own two eyes watched Polk shoot Euro. Cicero
9 Williams was at the scene of this crime.

10 And think about all the other evidence that backs up
11 what Williams told you about this shooting. Williams told you
12 the exact type of gun that Polk used to shoot Euro. He told
13 you it was a .40 caliber gun, a .40 caliber pistol. And sure
14 enough, the shell casings recovered from the 1055 shooting were
15 all .40 caliber rounds and they were all from the same gun.

16 How did Williams know the exact type of gun that Polk
17 used on that night? Because he was there. Because he saw the
18 gun in the car right before Polk got out and started shooting
19 at Euro because he told Polk, you got to cock it back before
20 you can start to shoot.

21 Here is another example. Williams testified that Euro
22 was selling marijuana in 1055 and that's why Polk shot him.
23 And when Detective Patterson went to the hospital the night of
24 the shootings and Detective Patterson interviewed Euro, what
25 did he find in his property? He found baggies of marijuana.

I9DAAPOL2

Closing Statement - Folly

1 How did Williams know what Euro was doing? How did he know
2 that he was selling marijuana at 1055? Polk. Polk told him.
3 He told him right before he got out of the car and shot him.

4 One last example. Williams told you that after this
5 shooting the members of this crew all got together and tried to
6 figure out what they were going to do. They had just done a
7 shooting right at a location where there was surveillance
8 cameras. So they had to do something. One of the things they
9 did, they sent Ken Corbett back to the scene to pick up the
10 shell casings from that shooting, to clean-up any evidence that
11 would tie that shooting back to Polk's crew. And guess what?
12 When you look at the video right there is Kevin Corbett picking
13 up those shell casings off the ground, but he missed some. So
14 you saw those remaining shell casings at this trial. And you
15 learned that they all came from the same gun, a .40 caliber
16 pistol. So the tape corroborates Williams because Williams was
17 there and Williams saw exactly what happened. He was there and
18 he saw Polk shoot Euro.

19 Ladies and gentlemen, there's even more evidence that
20 Polk was the shooter. Remember that silver Toyota Camry that
21 kept coming up throughout this trial, the same Camry that had
22 the gearshift tested for DNA? Polk's DNA was on that
23 gearshift. That was the testimony that you heard yesterday
24 from Heather Nelson. And it's no mystery why Polk's DNA was on
25 the gearshift of that car. Polk drove that car. He drove that

I9DAAPOL2

Closing Statement - Folly

1 car to the July 25, 2015 shooting. He drove that same car to
2 the August 4, 2015 shooting which was ten days later. So let's
3 look at that car. Here it is, the silver Camry, a silver
4 Toyota Camry with Florida license plate number 112PRA. The
5 person who was driving this same car was the shooter at the
6 July 25 shooting and the August 4 shooting, just 10 days later
7 and Polk's DNA is right on the gearshift. Here is a picture of
8 the July 25, 2015 shooting. And here's another picture of the
9 silver Camry at the August 4 shooting.

10 Then let's go back and look at the car that had Polk's
11 DNA on the gearshift. See the black grill in the front of the
12 car of the Toyota, same silver color, same Florida license
13 plate, same car, ladies and gentlemen. And not only was Polk's
14 DNA on the gearshift of that car but Polk was also on video
15 driving that same car just two days later. This is the video
16 from Tim Smith's phone two days after the July 25 shooting. It
17 shows Polk driving that car. And when you look at this video
18 on the interior of this car is all this red distinct stitching.
19 And, ladies and gentlemen, when you look at the photos of the
20 car that had Polk's DNA on it, the interior of that car is
21 identical.

22 How did Polk end up driving around in some rental car
23 from Florida? Williams explained that to you. He told you
24 that Polk had a crack customer named Deedee who gave Polk the
25 car in exchange for crack. Williams told you that the rental

I9DAAPOL2

Closing Statement - Folly

1 car was a silver Camry and he even told you that it had a
2 Florida license plate. Williams also identified a picture of
3 Deedee. And you know that everything Williams told you about
4 this rental car is true. The parties stipulated that the
5 person in this photograph, the person Williams identified
6 Deedee was the crack customer who had lent this car in exchange
7 for crack to Polk is someone named Delisa Harris. And guess
8 what? The parties also stipulated that Delisa Harris rented
9 this very same Toyota Camry.

10 So there's no question. There's no doubt, ladies and
11 gentlemen, that Polk was the one driving around in this Toyota
12 Camry, that he was the one who did both of these shootings.

13 Just based on the July 25 shooting you already have
14 enough evidence to convict Polk of Count Three. The shooting
15 of Euro also proves to you beyond a reasonable doubt that Polk
16 used or carried a firearm during and in relation to his
17 narcotics conspiracy. That makes him guilty of Count Three.
18 Period.

19 But the evidence on Count Three, ladies and gentlemen,
20 does not end there because Polk did the exact same thing ten
21 days later. The August 4 shooting where he took the same car
22 and shot two more people is another way you can find him guilty
23 of Count Three. Let's talk about that shooting for just a
24 moment.

25 You saw the video at trial of Polk arriving at that

I9DAAPOL2

Closing Statement - Folly

1 shooting driving the same silver Camry running into the store
2 and running back out afterwards. Here is the video.

3 (Video playing)

4 There's Polk arriving in the silver Camry. He runs
5 into that store and you also know what's happening inside of
6 that store. Polk fires a shot and everyone outside of that
7 store starts running. If you look at that video you can see
8 the terror on those people's faces because it's the middle of
9 the day in broad daylights and Polk is running into a store and
10 blowing a shotgun blast through a door at two people.

11 You heard how horrifying this experience was from Juan
12 Rios, the first witness you heard at this trial. He didn't
13 want to be here testifying. You could tell that from his body
14 language. He was forced to come in here with a subpoena. You
15 heard him say that. And you know why he didn't want to be
16 here, ladies and gentlemen. Mr. Rios was chased by a stranger
17 with a shotgun. He had to hide for his life in the back room
18 of a store while he pressed himself up against a door to try to
19 stop the person who was pursuing him from getting in. Mr. Rios
20 was shot with a shotgun straight through a door. He had his
21 leg and his hand blown apart by the blast from that shotgun.
22 He had seven holes blown into his leg. And you heard from the
23 ballistics expert, Detective Fox, who explained to you what a
24 shotgun blast is designed to do at close range.

25 Ladies and gentlemen, it's designed to hit the target.

I9DAAPOL2

Closing Statement - Folly

1 And you saw the damage yourself. You saw the victim's horrific
2 injuries and you saw the back room after this shooting. It was
3 a blood bath. It was like a scene from a horror movie. But
4 this was real life. This happened. And this man Terrell Polk
5 did that shooting. So of course, Mr. Rios did not want to come
6 into this courtroom and have to relive any of what happened to
7 him on that day.

8 You saw the photos from this shooting, the hospital
9 records of the shooting victims and the shotgun buckshot from
10 the scene of the shooting. No one disputes that this shooting
11 happened. So the only issue, ladies and gentlemen, is whether
12 or not once again Terrell Polk was the shooter. Ladies and
13 gentlemen, of course he was. Of course, he was. The evidence
14 is overwhelming and we'll just go through that briefly.

15 First, we've already discussed the silver Camry. This
16 is one of the links between the July 25 shooting and the
17 August 4 shooting ten days later. So the silver Camry was at
18 both shootings. Polk was driving that same silver Camry on
19 video two days after the July 25, 2015 shoot something. And of
20 course Polk's DNA is on the gearshift of that car. So that's
21 one way, just one way you know that Polk was the shooter on
22 August 4.

23 Another way you know that Polk was the shooter is that
24 he told Cicero Williams all about it. On the same day he did
25 the shooting he confessed to Cicero Williams about what

I9DAAPOL2

Closing Statement - Folly

1 happened. He told Williams all the horrifying details that
2 only someone who was actually there at that shooting would be
3 able to know. Let's really focus on Williams' testimony about
4 that August 4 shooting for a moment.

5 What did he say that Polk told him happened? Polk
6 told Williams he was driving the Toyota Camry which we know he
7 was because you saw it right there on the screen on that video
8 and he told that you he saw someone named Ryan and you saw the
9 hospital records and you know that one of the victims from this
10 shooting was named Ryan Jefferson. So Williams got that detail
11 right. And you know why he got it right, ladies and gentlemen.
12 Polk told him.

13 Second, Polk told Williams that as he pulled up he got
14 out of his car and he chased after Ryan into the back of the
15 store. Polk said he tried to get into the bathroom door and
16 when he couldn't kick it in, he took his shotgun and blasted
17 one, one shot through that door. Look at the testimony about
18 these shootings.

19 Look how Rios' testimony is completely consistent with
20 what Williams told you that Polk had told him about that
21 shooting. Think about that for a minute. How could Williams
22 know the exact sequence of these events, the exact details of
23 what had happened on that day unless Polk had told him?
24 Williams knew that Polk had tried to force that door open in
25 that back room and when he couldn't, he blasted a hole through

I9DAAPOL2

Closing Statement - Folly

1 it, one single shot. Again, how could Williams know that
2 unless Polk had told him? He wouldn't.

3 It also matches up perfectly with the buckshot that
4 was recovered from the scene and the injuries to those victims.
5 Remember Detective Fox told you that the buckshot recovered at
6 that shooting was consistent with ammunition that had been
7 fired from a shotgun right down to the exact details. The
8 story that Williams told you about what had happened matches up
9 with the story that Juan Rios told you when he testified in
10 front of you. It matches up with the photographs from this
11 scene and it matches up with the surveillance video. So you
12 know that Polk is the one who carried and shot that shotgun on
13 August 4.

14 Let's talk about another way that you know that Polk
15 carried and used guns. He talked about it. He talked about it
16 a lot all over those prison calls. Those calls were all from
17 September 2015 just the next month after Polk had shot Ryan and
18 shot Rios. Let's look at just a few of them. Here in this
19 call Polk is talking about demonstrations that he has, two of
20 them. And later in the call Polk is talking about Buddha Man
21 and how Buddha ain't been trying to hold no basketballs. Two
22 days later Polk talks to another member of his crew, Timothy
23 Smith. Smith tells Polk there's a dispute with someone named
24 "Noon" and you know this is Timothy Smith because Williams
25 listened to that call and recognized his voice. And in this

I9DAAPOL2

Closing Statement - Folly

1 call Tim is telling Polk how during that incident he had gone
2 to get Steph Curry and when he came back with Steph Curry
3 someone named "Noon" was hiding out.

4 Let's look at one more nine days later. Here is Polk
5 talking about basketballs again, this time with his girlfriend.
6 He asks her, Do you still have my basketball in my safe?
7 Demonstrations? A basketball in a safe? Steph Curry? Guns.
8 Ladies and gentlemen, your common sense tells you exactly what
9 these conversations are about. And you know exactly why
10 Terrell Polk is speaking in code on his prison calls. His
11 calls are being recorded and you know that because you listened
12 to them right here at this trial. So he's not going to go
13 around using words like "shotgun" and "assault rifle" when he
14 is talking about guns on his recorded calls. But ladies and
15 gentlemen, this isn't Morse Code. And when you look at the
16 words of these calls you know exactly what Polk is talking
17 about. Guns.

18 So ladies and gentlemen, there is no question that
19 Polk used and carried guns and that those guns were discharged.
20 You saw two of those shootings and you saw Polk in his own
21 words talk about his guns on his prison calls. And you know
22 exactly why he was using and carrying all those guns. He
23 carried them because he was a part of a violent drug crew. He
24 carried them and he used them so that he could protect his drug
25 turf. He used them and he carried them so that his crew could

I9DAAPOL2

Closing Statement - Folly

1 maintain control over this area of the Bronx where they were
2 running their drug operation.

3 You've seen overwhelming evidence at this trial where
4 Polk used and carried guns in connection with his drug dealing.
5 Even aside from what you saw, even on video Williams told you
6 that Polk and Williams and members of his crew had guns on them
7 nearly every single day. Why? Because dealing crack cocaine
8 is a very dangerous business and you've seen that throughout
9 this trial. You've seen that again and again on the videos and
10 in these shootings. Members of this crew like Polk, Williams
11 and Corbett, they carried guns as a matter of course.

12 That's why Polk and that's why Kevin Corbett had
13 loaded guns at the ready on the night of the Euro shooting.
14 And that's why Terrell Polk when he was driving around at noon
15 in the middle of the day was carrying a loaded sawed-off
16 shotgun. And that's also why Polk and his crew had a .9
17 millimeter pistol in the back of Polk's car less than a month
18 later. And you remember what you heard about that gun. That
19 gun like all the other guns was loaded and ready to be used.

20 Now Polk's DNA is not on that gun but Smith's and
21 Corbett's DNA is and that's because the members of this crew
22 all used and shared these guns. That's because being a member
23 of this crew meant that you had to be willing to shoot. It
24 meant using and carrying guns. It meant being willing to shoot
25 on sight in order to protect their drug territory. So you know

I9DAAPOL2

Closing Statement - Folly

1 that Polk used and carried guns and you know that he did it
2 directly in support of his participation in this drug
3 conspiracy.

4 Ladies and gentlemen, the bottom line is that Polk is
5 guilty of Count Three for many, many reasons, the July 25
6 shooting of Euro, the August 4 shooting of Ryan and Rios, the
7 fact that he carried around other guns on other occasions as
8 part of being involved in this drug conspiracy, all of that
9 makes him guilty of Count Three. And you know that he
10 discharged those guns, that he shot those guns because you've
11 seen evidence about two of those shootings throughout this
12 week. It's on tape. You saw it with your own eyes. You heard
13 testimony about it and you also saw ballistics evidence and
14 medical records.

15 So let's turn to Count Four the very last count for
16 you to consider in this case. Let's make this one very, very
17 simple, ladies and gentlemen. This photograph right here with
18 Polk shooting Euro with that .40 caliber gun makes Polk guilty
19 of Count Four. That's it. That's all there is to it. The
20 elements of Count Four are very straightforward.

21 First, Polk was briefly convicted of a crime
22 punishable by imprisonment for a term exceeding one year.

23 Second, that on or about July 25, 2015, Polk knowingly
24 possessed ammunition.

25 And third, that Polk's possession of that ammunition

I9DAAPOL2

Closing Statement - Folly

1 was in or affecting interstate or foreign commerce.

2 Ladies and gentlemen, the parties have stipulated to
3 the first element. So that's not even in dispute.

4 Ladies and gentlemen, the parties have also stipulated
5 that the ammunition recovered on the morning of the shooting
6 was not manufactured in New York.

7 I expect that Judge Daniels will instruct you that
8 ammunition that came from any other country or state to New
9 York has traveled in interstate commerce. So that's already
10 two out of the three elements. So the only thing at issue here
11 is whether Polk is the one who possessed this ammunition here.
12 And you already know the answer to that. We've talked about
13 that at length. Polk possessed that ammunition because Polk
14 fired those bullets at Euro. That is the ammunition that came
15 from the .40 caliber gun that he fired at Euro.

16 How do you know that that ammunition came from Polk's
17 gun?

18 First, you saw him fire that gun on the video and
19 we've talked about all the ways you know that Polk is the one
20 who is the shooter on that video.

21 Second, you saw the shell casings that were recovered
22 from the location of that shooting at 1055 University Avenue.

23 And you saw exactly where they were found right there
24 right next to that ice freezer, right where you would expect
25 them to be found right where Polk had shot Euro that same day

I9DAAPOL2

Closing Statement - Folly

1 that those shell casings were found. And you also know that
2 they all came from the same gun and that they were all .40
3 caliber bullets. So this charge is easy, ladies and gentlemen.
4 You know that Polk was the shooter and you know that these .40
5 caliber shell casings came from that same gun that Polk used to
6 fire at Euro. Polk is guilty of Count Four.

7 Ladies and gentlemen, this is not a close case. You
8 have seen videos of Polk's crimes. You have heard Polk's words
9 on tape. You have seen the crack cocaine that was recovered
10 from right next to Polk's bed and you have heard from a
11 cooperating witness who is on the inside of this crew and
12 committed crimes right alongside Polk who was right there the
13 same night that Polk shot Euro. You've heard from law
14 enforcement witnesses. You've heard from the victims of one of
15 Polk's senseless acts of violence. Polk was a part of a drug
16 crew. It was a crew that fiercely protected its turf that sold
17 drugs, that sold crack cocaine to the Highbridge public housing
18 community, that engaged in shootings in order to protect that
19 territory. And Polk was a very important member of that crew
20 because he was someone who was willing to shoot to protect that
21 territory. The evidence in this trial has proved
22 overwhelmingly that Polk is guilty as charged.

23 THE COURT: Ladies and gentlemen, before we continue I
24 am going to give you a short ten-minute break. Don't discuss
25 the case keep and open mind until I finally give you the case.

I9DAAPOL2

Closing Statement - Folly

1 (Jury not present)

2 (Continued on next page)

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I9d6pol3

Summation - Mr. Lind

(In open court; jury not present)

THE COURT: Mr. Lind, are you ready to proceed?

MR. LIND: Yes. May I make a request of the Court?

THE COURT: Yes.

MR. LIND: I am looking for a portion of the transcript from yesterday.

THE COURT: You want a transcript from yesterday?

MR. LIND: Yes, Judge.

THE COURT: Yes.

MR. LIND: Thank you very much, Judge.

THE COURT: Let's get the jury.

(In open court; jury present)

THE COURT: You can be seated, ladies and gentlemen.

MR. LIND: May I proceed?

THE COURT: Yes.

MR. LIND: Thank you.

Good morning, ladies and gentlemen.

A couple things which were noticeably absent from the government's summation this morning, this issue of burden of proof beyond a reasonable doubt. If this were a civil case where we would have to go 50/50, that would be one story; but this is a criminal case where the burden of proof is beyond a reasonable doubt. The Judge will instruct you about reasonable doubt. It is a doubt obviously founded on reason and arises out of the evidence or lack of evidence. Burden of proof

I9d6pol3

Summation - Mr. Lind

1 beyond a reasonable doubt must be so convincing that a person
2 like you, each of you, would not hesitate to rely on it in
3 important affairs of your own life.

4 Now, I submit to you that, but obviously it is your
5 decision that counts, that the government has failed in a
6 number of respects and I will go through them. The government
7 has talked about all these guns that Mr. Polk has. First of
8 all, I would like to start out with the one in the car.
9 Remember, the incident in the car with these two other men.
10 You heard testimony from the government's own expert that his
11 DNA isn't on that gun. The DNA of the other two occupants of
12 the car do have their DNA on it. The government I think sort
13 of intimated during the testimony, Well, they may have made it
14 cleaner or something like that.

15 The government's own exhibit shows that Mr. Polk
16 didn't know anything about that. This is Government
17 Exhibit 807 T, the transcript of a conversation between Mr.
18 Polk and an unknown male on September 7th, 2015. Mr. Polk
19 says, "Dumb ass nigger. Dumb ass nigger." Now, Mr. Polk is
20 not Cary Grant. He is not using the most sophisticated
21 language in the world, but that shouldn't be a basis for you to
22 find him guilty.

23 "Dumb ass nigger has a basketball on him." Now, we
24 have heard what a basketball may mean, which is a gun. "And he
25 didn't ever tell me, B. In my car he had it. I said, 'What?'"

I9d6pol3

Summation - Mr. Lind

1 Is that enough to show you he didn't know that? If the DNA is
2 not enough to show you that he didn't know that gun was in the
3 car, I submit this puts it over that issue.

4 Let's go to the Anderson Avenue situation. The
5 government had Mr. Williams testify about Anderson. He
6 testified about a lot of stuff, but they had him testify about
7 the Anderson Avenue situation. Noticeably he didn't testify --
8 he didn't ID him coming out of the car. Think about that. He
9 didn't ID him coming out of the car. Reasonable doubt arises
10 out of the evidence or the lack of evidence. He didn't ID him
11 coming out of the car.

12 Now, I am not disputing the DNA. His hands are on the
13 gearshift. His imprint, his DNA is on the gearshift; but that
14 was just one person that they talked about. They didn't talk
15 about the 50 or hundreds of other people who could have had
16 their DNA on that gearshift. He didn't testify that that was
17 that man.

18 Nor did the other person, Juan Rios. He came to
19 court. He didn't like coming to court. No one is disputing
20 that. The government didn't ask him -- and they have the
21 burden of proof -- Do you recognize that man? Is he the man
22 who ran after you into that store? Reasonable doubt arising
23 out of the lack of evidence. Now, Williams claims that he gave
24 him all the details and this and that shortly after the event,
25 but you have to trust Williams's own account that that was the

I9d6pol3

Summation - Mr. Lind

1 source of where that information came from rather than as he
2 told the prosecutors he heard about it on TV. He heard about
3 it on TV.

4 Now, let me go to the more troubling issue, which is
5 the one on University Avenue on July 25th, 2015. There is an
6 issue where Mr. Williams does identify him. Do you remember
7 that? The government just went over that. I asked him on
8 cross: -- I think it was yesterday. Things go back so quickly.

9 "Q. There was a gun that was used allegedly by Mr. Polk on
10 University Avenue.

11 "A. Yes, sir."

12 Notably in their summation from what I recall, they
13 kept saying a .40 gun. They didn't say it was a .40 Glock. Do
14 you remember that? So I asked this question:

15 "Q. There was a gun that was used allegedly by Mr. Polk on
16 University Avenue?

17 "A. Yes, sir.

18 "Q. You told us on Tuesday that it was a Glock .40?

19 "A. Yes, sir."

20 Do you remember that?

21 The government's expert, who has testified 320 times
22 as an expert, remember, I was questioning him about the firing
23 pin? I don't remember if you remember this from yesterday if
24 you don't mind.

25 "Q. So you determined that this was shot out of a weapon with

I9d6pol3

Summation - Mr. Lind

1 a hemispherical firing pin;" --

2 Do you remember this at all?

3 -- "is that correct?

4 "A. That is correct.

5 "Q. A Glock does not have a hemispherical firing pen; does it?

6 "A. They have an elliptical firing pin."

7 Now, what does that mean? What was I trying to get
8 at? Because the casings had an impression on the back of them,
9 which would show what type of firearm hit that casing, and it
10 wasn't a Glock. There was a little bit of back and forth.

11 Now, ladies and gentlemen, I also told to you and the
12 government has invited you to look at this film. Look at the
13 film of Mr. Polk driving in that car with the two other
14 gentleman. Remember, he has two tattoos on his arms. Very
15 pronounced tattoos on his arm. Look at the video from
16 University Avenue and see if that matches.

17 Now, I want to go now to talk about this drug
18 conspiracy, which is really part and parcel of the issue in
19 Count One. Mr. Williams testified that there was no
20 partnership between him and Mr. Polk. Do you remember? I
21 asked him about that. He said he sold him stuff. Yeah, he
22 sold him stuff; but that doesn't make that person a partner or
23 a coconspirator of you. Williams was buying stuff and selling
24 stuff for himself, not for Mr. Polk.

25 Now, also you have got to remember in Mr. Williams'

I9d6pol3

Summation - Mr. Lind

1 testimony that he may have a motivation to lie in order to get
2 out of jail. That is a motivation, ladies and gentlemen. He
3 told you, I have done all this bad stuff, and I will go into it
4 in a minute, and I want to get time-served. Here is a man who
5 has shot at people, killed people and tried to kill people with
6 his guns.

7 Every time a court like Judge Daniels would give him a
8 break -- remember these breaks he got when he got out on
9 supervised release? Each time he would get out, he would
10 resume drug-dealing, resume using crack and other drugs and
11 then be rounded up again. Finally, it got to the point in 2016
12 when he was arrested. He was arrested with other guys from the
13 Highbridge area, not Mr. Polk or none of these other people you
14 have heard about like Smith and these other people. He was
15 charged with selling drugs, for using weapons and intimidating
16 a witness in connection with that case. None of these other
17 people who he was supposedly in a partnership, a conspiracy
18 with were charged in that case. Only Williams.

19 Now, the government's witness told you it couldn't
20 have been a Glock, but Williams told you it was a Glock. Who
21 do you believe in a situation like that? That was part of the
22 picture he tried to present to prove that Mr. Polk was guilty
23 of that shooting.

24 Now, what I would like to go through briefly some of
25 the crimes that Mr. Williams has been involved with. First of

I9d6pol3

Summation - Mr. Lind

1 all, he was involved in a shooting that year, 1996. Around six
2 years later he was involved in another shooting at 1055
3 University Avenue. A few years later he was involved in
4 another crime at 1055 University Avenue. In 2007 another
5 shooting. In 2009 another shooting. These shootings were
6 intended not to scare people. They were intended to kill them.
7 These are crimes that the government itself brought up.

8 And then one of the shootings -- I don't know if you
9 remember this -- was because of some hideous thing that someone
10 did. You know what they did? They hit my friend's mom in the
11 face with a cake, and that gave him license to try to shoot to
12 kill those people. That is the kind of guy Williams is. And
13 then the summer of 2015 he also used to commit an assault on
14 another person. Those are just the arrests.

15 On my cross-examination I brought up all of the crimes
16 that he was actually convicted for. The government made a big
17 deal in their presentation with Mr. Williams that of all the
18 cases in which he was arrested, but they did not make any deal
19 about the convictions that he actually had.

20 Now, I want to go first very briefly to the testimony
21 about narcotics, Count One, which is corroboration. A lot of
22 the other crimes that may have had some corroboration for,
23 there is absolutely no corroboration for the drug-dealing, the
24 amount drugs. There are no videos. There are no photos.
25 Aside from Williams, there is no testimony from anyone about

I9d6pol3

Summation - Mr. Lind

1 this alleged drug conspiracy that my client was involved in.

2 Oh, I saw him. There is nothing to corroborate.

3 There is not enough to convict Tyrell Polk of a
4 conspiracy to sell crack, much less 280 grams of crack. He
5 told you that he sold Mr. Polk 60 to 100 grams of crack during
6 the space of a year and a half that Mr. Polk was out. Where is
7 the proof even of that other than his testimony? That is his
8 testimony. Not corroborated.

9 In fact, it was brought out he was charged in another
10 indictment and he was charged in that case with narcotics
11 dealing with a completely different set of people. Do you
12 remember this in 2016? He pled guilty to that. Narcotics
13 dealing with a completely different set of people during the
14 same time period as this case. Those are the people that
15 became involved with him, not Terrell Polk.

16 So I have talked about the guns. I told you that an
17 essential element here is that the Glock that he was mentioning
18 was in fact the gun that was used that day. He would know
19 everything. He would know that it was a Glock because he
20 testified that that was the gun that he brought. That was the
21 gun that he used.

22 Also there is also a prison tape about, remember, once
23 again about a basketball being in a safe. Do you remember this
24 supposedly with the drugs? The Probation officers came,
25 remember this, in early 2017. They went to Mr. Polk's

I9d6pol3

Summation - Mr. Lind

1 apartment and they did a search. They found some crack. They
2 looked in the safe because they were looking for a gun in the
3 safe. There was no gun in the safe. There was crack, ladies
4 and gentlemen, but there was no gun in the safe.

5 I want to go very briefly with the crimes that he
6 committed. Each one of these crimes he wanted to kill someone
7 or virtually all of these crimes he wanted to kill someone.
8 There was one in '97. There was in 2007. There were a series
9 of crimes of violence that he was engaged in. This is the man
10 that wants to get out of jail, who wants to get time-served.

11 Folks, I am about to conclude. Each of you were
12 selected because apparently you have common sense and this is
13 an important moment, an important day for Mr. Williams and his
14 family. I am not looking for sympathy here. I have no right
15 to do that, but I am looking to each of you for justice. If
16 you have any doubts, ladies and gentlemen -- I submit there are
17 substantial doubts -- you should have them now not after this
18 case. There is no second chance for Terrell Polk. You should
19 consider not only the evidence but the lack of evidence in this
20 case. When you do, I believe you will feel that there are
21 reasons to doubt the government's proof.

22 Thank you.

23 THE COURT: Any further rebuttal by the government?

24 MR. KROUSE: Yes, your Honor. Thank you.

25 Ladies and gentlemen, I will be quick. I am not going

I9d6pol3

Summation - Mr. Lind

1 to get up here and go over everything that Mr. Folly already
2 told you. I know that you have been sitting here patiently
3 listening to all the evidence and paying close attention and we
4 thank you for that. I am sure you are anxious to get to your
5 deliberations.

6 Mr. Lind just made a lot of different arguments to
7 you, and I just want to address a couple of them. Now, to be
8 completely clear the defense has no burden in this case. The
9 burden is with the government, and we embrace that burden. It
10 is always with the government. Here, the government has met
11 its burden to prove this case beyond a reasonable doubt.

12 Mr. Lind started by focusing on that burden, on the
13 proof beyond a reasonable doubt. I want to dispel any mystery.
14 There is nothing magical about proof beyond a reasonable doubt.
15 That is the burden that is applied in every single criminal
16 case in every courthouse in the United States and it has been
17 throughout our history. The question is whether there is any
18 reasonable doubt. When you look at all the evidence, has the
19 government proven its case beyond a reasonable doubt? Here, we
20 have.

21 Mr. Lind talked first about the gun that was in the
22 car. I just want to make sure there is no confusion about the
23 guns are in the case. The testimony that you heard is that the
24 crew at issue, the conspiracy, shared five guns. There is a
25 .40 gun and a 9-millimeter gun, both of which are pistols; a

I9d6pol3

Summation - Mr. Lind

1 revolver; a sawed-off shotgun; and an assault rifle. The first
2 gun used in the first shooting, that is .40 gun and that is why
3 there were .40 shell casings recovered at the scene. The
4 second gun that was used in second shooting is a sawed-off
5 shotgun. That is why there were pellets that were recovered at
6 scene because it was from a shotgun blast. The third gun that
7 was recovered in the car three weeks after the second shooting,
8 the car that Terrell Polk was driving, that is a 9-millimeter.
9 That is a completely different gun from the two shootings.

10 The guns used in the shooting were never presented to
11 you in evidence. So don't distracted by the DNA evidence about
12 that third gun. The government is an open book. We have told
13 you there is no DNA from Terrell Polk on that gun. That
14 doesn't mean he never handled it. You heard the testimony of
15 Ms. Nelson the variety of reasons why someone's DNA may not be
16 on it. Someone might have held it a month ago and two weeks
17 ago and it might have wiped off. It might not have gotten on
18 there in the first place. No one is saying his DNA is on the
19 gun and it doesn't matter for all the charges in this case.

20 The guns that were used in the shootings were the .40
21 gun and the shotgun. This third gun is just another gun, a
22 9-millimeter gun that the crew used and that the crew had with
23 them in that car and you heard testimony that gun didn't just
24 magically appear there. The other two occupants of the car,
25 their DNA was on that gun. That corroborates Mr. Williams when

I9d6pol3

Summation - Mr. Lind

1 he says that everybody in this conspiracy shared guns
2 constantly.

3 Mr. Lind made much about the ballistics, just to stick
4 with the gunpoint on the .40 shell casing. Pay attention to
5 the transcript that Mr. Lind cited to you. Those are not
6 Cicero Williams's words. Those are Mr. Lind's words. He said,
7 .40 Glock? And Mr. Williams said, Yes. In his own testimony
8 when the government asked what kind of gun was it, Mr. Williams
9 answer was a .40 pistol. Glock came from Mr. Lind and Mr. Lind
10 put that in there or it is in there and now he is arguing from
11 it. The significance is that a Glock has this hemispherical
12 firing pin versus an elliptical firing pin.

13 Mr. Williams never said anything about a Glock on his
14 direct testimony. His testimony was that it was a .40 pistol.
15 you know that testimony was correct because the three shell
16 casings that were recovered from the scene of that shooting
17 were from a .40 pistol. It was from the same .40 pistol.

18 On the DNA point that Mr. Lind raised, I touched on
19 this briefly about the DNA on the gun and how irrelevant that
20 is to any of the shootings here and in any of the major conduct
21 that the government has proven. You know what DNA evidence is
22 relevant to the shooting? It is that Mr. Polk's DNA was a
23 perfect match for the car that was used for both shootings and
24 the DNA was on the gearshift of the car. You know who touches
25 the gearshift of the car? The person who is driving the car.

I9d6pol3

Summation - Mr. Lind

1 The person who needs to change the gears.

2 You heard the testimony. There was one DNA profile on
3 that gearshift. One major donor. This whole argument that the
4 government didn't test any of these other people is irrelevant.
5 There was one profile. The question was whose DNA was that
6 profile. Whose DNA matched that profile. The testimony you
7 heard is that Terrell Polk's DNA was the perfect match for that
8 profile. That is his DNA on the gearshift. He is the person
9 driving the car and the car is at both shootings and the person
10 who committed both shootings was the driver.

11 You it see it on the video. The driver gets out of
12 the car on July 25th with a .40 gun and shoots Euro. The
13 driver gets out of the car on August 4th with a sawed-off
14 shotgun and chases two people into a store and blasts through
15 that door shiting Ryan and Juan Rios. So the only DNA that
16 matters in this case is the DNA that is a perfect match for
17 Terrell Polk on the car that is used in both shootings.

18 Mr. Lind talks about it the drug conspiracy and acts
19 like all the members had to get together and sign a contract to
20 join into this conspiracy. This is not an LLP. They are not
21 incorporating a business out here. They are coming together to
22 commit crimes. That would be ridiculous. What they are doing
23 is banding together because dealing drugs is dangerous and you
24 have to have other people who have your back.

25 Mr. Williams explained that to you. It is dangerous.

I9d6pol3

Summation - Mr. Lind

1 People want to come in, take your territory, take your money.
2 You have to be able to defend yourself. You need guns for that
3 and you need other people who are willing to shoot for you, to
4 back you up, to send you customers, to supply you when your
5 supplier doesn't have anymore drugs and you are out. They are
6 working together.

7 That is all the law requires. They agreed together to
8 work together. You don't need a record. The government
9 doesn't need to admit into evidence a signed contract with all
10 the members. That is not what the law requires. What it
11 requires is what you have heard, which is that this group came
12 together to sell drugs and they did all these things to help
13 each other -- steering, supplying sharing guns. When the
14 rubber hit the road, when it got dangerous, when there was a
15 dispute, they took those guns and they used them to threaten
16 people and to shoot at people. That is a criminal conspiracy.
17 It's a conspiracy to deal drugs, which is what Mr. Polk is
18 charged with.

19 Now, Mr. Lind also mentioned tattoos. He mentioned
20 that on cross-examination. He did that in his closing as well.
21 Mr. Polk has tattoos on his arm. Use your common sense. The
22 video that Mr. Lind is talking about from the first shooting is
23 in the middle of the night. It is midnight. It is dark
24 outside. Mr. Polk is a distance from the camera. You can't
25 even get a good look at the person's arms. Of course you

I9d6pol3

Summation - Mr. Lind

1 cannot distinguish something as detailed and as fine as a
2 tattoo. On that one I will leave it at that. Use your common
3 sense. You are not going to see identifying details like a
4 tattoo on a video like that.

5 Finally, Mr. Lind spend a lot of time attacking
6 Mr. Williams, and he has to do that. Mr. Williams's is
7 evidence against his client is absolutely devastating. He is
8 an eyewitness to the shooting. So of course Mr. Lind is going
9 to spend a lot of time trying to distract you from the real
10 evidence in this case and to try to throw enough mud at Cicero
11 Williams that you decide not to listen to his testimony.

12 Ladies and gentlemen, Mr. Williams is not on trial
13 here. Mr. Polk is. The question is not whether you like
14 Mr. Williams or approve of his conduct. We're not asking you
15 to be friends with Mr. Williams. The question is what the
16 evidence shows in this case and whether it proves beyond a
17 reasonable doubt that Mr. Polk committed the four offenses that
18 he is charged with. And the answer to that question, which is
19 the only question that is before you, is yes.

20 Because Mr. Lind spent so much on Mr. Williams I will
21 say a few things. Now, keep in mind the judge is going to
22 instruct you on this, but you, the jury, you are the ultimate
23 deciders on whether Mr. Williams told you the truth. You are
24 the deciders of his credibility and so pay attention to his
25 demeanor. You were here. You watched it. He took an oath to

I9d6pol3

Summation - Mr. Lind

1 tell the truth and he testified before you. You can tell from
2 his demeanor he was not thrilled to do it. He didn't want to
3 get up here and tell the truth about the crimes that one of his
4 best friends had committed that he had known since they were
5 young. It is his cooperation agreement that requires it. It
6 required him to tell the truth about the crimes that he
7 committed that he participated in with others and that he
8 witnessed.

9 Mr. Williams told you that his understanding of the
10 cooperation agreement was that if he lied that cooperation
11 agreement would get ripped up. Mr. Lind talked about
12 Mr. Williams's incentives a lot. His only incentive is to tell
13 the truth. How do you know Mr. Williams did that? You know
14 that because his testimony is corroborated by all of the other
15 independent evidence in this case. Mr. Williams may be a lot
16 of things, but he is not a magician.

17 He cannot conjure up evidence out of thin air. He
18 cannot tell you about a shooting that happened and then there
19 is a video that corroborates the exact details of that
20 shooting. He cannot tell that you Mr. Polk pointed the gun,
21 pulled trigger and it didn't fire and he looked over to the car
22 and then Mr. Williams said, Cock it back, and he cocked it back
23 and started firing and have that magically appear on the video
24 exactly as he described it. He cannot tell you that Corbett
25 went back on his bike to pick up shell casings and came back

I9d6pol3

Summation - Mr. Lind

1 with two of them and have that show up on the video that he is
2 riding up on a bike, Corbett, bending down and picking up two
3 shell casings.

4 He cannot describe the second shooting in great
5 detail. How it was one gunshot, how they chased them into the
6 back room, how they used a shotgun and have that corroborated
7 by the medical records, the video and the ballistics and where
8 the lead balls were recovered. If Mr. Williams was such a
9 liar, why wouldn't he say that he was there at that shooting or
10 he was a passenger in the Camry when Mr. Polk saw Ryan run into
11 the store? Because that is not the truth. The truth is that
12 Mr. Polk told Mr. Williams about it after the shooting

13 Mr. Williams can't describe how Euro was shot because
14 he was a marijuana dealer at 1055 and then when Euro goes to
15 the hospital for treatment, he is found with bags of marijuana.
16 Mr. Williams did not plant those bags of marijuana on Euro.
17 Mr. Williams cannot describe how a woman named Dee Dee rented a
18 Toyota Camry from Florida with Florida plates and brought it up
19 to the Bronx and let Terrell Polk drive it and it magically
20 turns out that the record shows a woman named Delisa Harris who
21 looks just like Dee Dee went down to Florida, rented a car with
22 those same plates and brought it back to the Bronx and had that
23 car recovered in the Bronx.

24 He cannot describe how the Camry was used by Polk at
25 two shootings and then when the Camry is recovered, Polk's DNA

I9d6pol3

Summation - Mr. Lind

1 is on the gearshift. Mr. Williams did not plant that DNA
2 there. When you think about whether Mr. Williams told you the
3 truth, think about how all of his testimony is corroborated by
4 the independent evidence. It is not some amazing coincidence
5 that Mr. Williams's testimony lines up with all the other
6 independent evidence. That is what happens when you tell the
7 truth.

8 Now, little details tell you everything you need to
9 know. Why would Mr. Williams say he told Terrell Polk to cock
10 the gun back? Why would he implicate himself in the shooting?
11 Because he was there and because he said that. He told
12 Mr. Polk to cock the gun back and Mr. Polk did it and then shot
13 Euro.

14 The truth is the defense wants to have it both ways.
15 They want you to believe Mr. Williams when he says that he
16 committed all these crimes -- that he shot someone because
17 someone smashed a cake into his friend's mom's face, that he
18 used a Glock 40, which isn't even if the words that Cicero
19 Williams used. They want you to believe Mr. Williams when he
20 says that; but when he says that he personally witnessed
21 Terrell Polk pull out a .40 gun and shoot Euro, suddenly they
22 don't want you to listen to anything that Mr. Williams has to
23 say. It doesn't work that way.

24 I am about to sit down. You now have heard all of the
25 evidence in this case. You know the four charges Mr. Polk

I9d6pol3

Summation - Mr. Lind

1 faces. You know that Mr. Polk in a 10-day period shot three
2 people in two separate incidents. You know that he pulled out
3 a .40 gun and fired five shots and you heard in this case
4 bullets don't have a name on them. When Mr. Polk fired those
5 five shots, he didn't know where they were going to go. This
6 is a residential community.

7 You heard testimony at least one of those shots hit
8 Mr. Cropper, Euro, right in the knee. You heard that Mr. Polk
9 chased two men into a store with a sawed-off shut gun, an
10 extremely dangerous weapon, fired a shotgun blast through that
11 door and hit two people, including a person who had nothing do
12 with anything and who was just in the wrong place at the wrong
13 time.

14 The government has proven Terrell Polk's guilt beyond
15 a reasonable doubt and we ask that you return the only verdict
16 that is consistent with the evidence, the law, and your own
17 common sense, that Terrell Polk is guilty.

18 THE COURT: Ladies and gentlemen, this is what we're
19 going to do. Your lunch has arrived. We'll take a short lunch
20 break. And then I will instruct you on the law and have you
21 begin your deliberations. So I am going to let you go ahead
22 and eat your lunch. You don't have to stay in the jury room.

23 I am going to bring you back out by 1:20 and then I
24 will give you instructions on the law. My instructions might
25 take about 45 or 50 minutes. So I will give you the

I9d6pol3

Summation - Mr. Lind

1 instructions on the law and have you begin your deliberations.

2 Don't discuss the case. Keep an open mind. Have
3 lunch and then I will see you at 1:20 and I will give you
4 instructions.

5 (Jury excused)

6 (In open court; jury not present)

7 THE COURT: We'll continue promptly at 1:20.

8 (Luncheon recess)

I9DAAPOL4

Jury Charge

AFTERNOON SESSION

1:20 p.m.

THE COURT: Ladies and gentlemen, you are about to enter your final duty, which is to decide the fact issues in the case. Before you do that, I will instruct you on the law.

I told you at the very start of the trial that your principal function during the taking of testimony would be to listen carefully and observe each witness who testified. it has been obvious to me and to counsel that you have faithfully discharged this duty. It is evident that you followed the testimony with close attention. I ask you to give me that same careful attention, as i instruct you on the law. Role of the court you have now heard all of the evidence in the case as well as the final arguments of the lawyers for the parties. My duty at this point is to instruct you as to the law. it is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. if any attorney has stated a legal principle different from any that i state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a

I9DAAPOL4

Jury Charge

1 whole when you retire to deliberate in the jury room. You
2 should not, any of you, be concerned about the wisdom of any
3 rule that i state. regardless of any opinion that you may have
4 as to what the law may be or ought to be it would violate your
5 sworn duty to base a verdict upon any other view of the law
6 than that which i give you. Role of the jury your final role
7 is to pass upon and decide the fact issues that are in the
8 case. You, the members of the jury, are the sole and exclusive
9 judges of the facts. You pass upon the weight of the evidence;
10 you determine the credibility of the witnesses; you resolve
11 such conflicts as there may be in the testimony, and you draw
12 whatever reasonable inferences you decide to draw from the
13 facts as you have determined them. I shall later discuss with
14 you how to pass upon the credibility or believability of the
15 witnesses.

16 In determining the facts, you must rely upon your own
17 recollection of the evidence, what the lawyers have said in
18 their opening statements, in their closing arguments, in their
19 objections, or in their questions is not evidence. in this
20 connection, you should bear in mind that a question put to a
21 witness is never evidence. it is only the answer which is
22 evidence. but you may not consider any answer that i directed
23 you to disregard or that I directed struck from the record. do
24 not consider such answers. Nor is anything i may have said
25 during the trial or may say during these instructions to be

I9DAAPOL4

Jury Charge

1 taken in substitution for your own independent recollection.
2 what I say is not evidence.

3 The evidence before you consists of the answers given
4 by witnesses, the sworn testimony they gave, as you recall it
5 and the exhibits that were received in evidence and the
6 stipulations of the parties. A stipulation is an agreement
7 among the parties that a certain fact is true or that if a
8 certain witness were called, he or she would give certain
9 testimony, you should regard any agreed facts as true.

10 Since you are the sole and exclusive judges of the
11 facts, I do not mean to indicate any opinion as to the facts or
12 what your verdict should be. The rulings I have made during
13 the trial are not any indication of my views of what your
14 decision should be as to whether or not the guilt of the
15 defendant has been proven beyond a reasonable doubt. Testimony
16 and exhibits in general.

17 Exhibits which have been marked for identification but
18 not received may not be considered by you as evidence. Only
19 those exhibits admitted into evidence may be received in the
20 jury room during your deliberations.

21 Anything you may have seen or heard about this case
22 outside the courtroom is not evidence and must be entirely
23 disregarded. You should consider the evidence in light of your
24 own common sense and experience.

25 Let me again emphasize that a lawyer's question is not

I9DAAPOL4

Jury Charge

1 evidence. At times, a lawyer may have incorporated into a
2 question a statement which assumed certain facts to be true and
3 asked the witnesses if the statement was true. If the witness
4 denies the truth of a statement and if there is no evidence in
5 the record proving that the assumed fact is true, then you may
6 not consider the fact to be true simply because it was
7 contained in the lawyer's question. For example, if a witness
8 was asked the question, "Do you have a red automobile?", you
9 would not be permitted to consider as true the assumed fact
10 that the witness owns an automobile, unless the witness
11 indicates that he or she does, or unless there is some other
12 evidence in the record that the witness owns an automobile. In
13 short, questions are not evidence; answers are. Juror
14 obligations in determining the facts, the jury is reminded that
15 before each member was accepted and sworn to act as a juror he
16 or she was asked questions concerning competency,
17 qualifications, fairness and freedom from prejudice and bias.
18 on the faith of those answers, the juror was accepted by the
19 parties. therefore, those answers are as binding on each of the
20 jurors now as they were then, and should remain so, until the
21 jury is discharged from consideration of this case. The
22 government as a party you are to perform the duty of finding
23 the facts without bias or prejudice as to any party. You are
24 to perform your final duty in an attitude of complete fairness
25 and impartiality. The case is important to the government, for

I9DAAPOL4

Jury Charge

1 the enforcement of criminal laws is a matter of prime concern
2 to the community. Equally, it is important to the defendant,
3 who is charged with serious crimes. The fact that the
4 prosecution is brought in the name of the United States of
5 America entitles the government to no greater consideration
6 than that accorded to any other party to a litigation. By the
7 same token, it is entitled to no less consideration. In this
8 regard, all parties, whether government or individuals, stand
9 as equals at the bar of justice. Improper considerations:
10 race, religion, national origin, sex or age your verdict must
11 be based solely upon the evidence developed at trial or the
12 lack of evidence. It would be improper for you to consider, in
13 reaching your decision as to whether the government sustained
14 its burden of proof, any personal feelings you may have about
15 the defendant's race, religion, national origin, sex, or age.
16 All persons are entitled to the presumption of innocence and
17 the government has the burden of proof, as I will discuss in a
18 moment. It would be equally improper for you to allow any
19 feelings you might have about the nature of the crimes charged
20 to interfere with your decision making process.

21 To repeat, your verdict must be based exclusively upon
22 the evidence or the lack of evidence in the, case. Sympathy
23 under your oath as jurors you are not to be swayed by sympathy.
24 You are to be guided solely by the evidence in this case. The
25 crucial, hard-core question that you must ask yourselves as you

I9DAAPOL4

Jury Charge

1 sift through the evidence is: has the government proven the
2 guilt of the defendant beyond a reasonable doubt?

3 It is for you alone to decide whether the government
4 has proven that the defendant is guilty of the crimes charged
5 solely on the basis of the evidence and subject to the law as I
6 charge you. It must be clear to you that once you let fear or
7 prejudice, or bias or sympathy interfere with your thinking
8 there is a risk that you will not arrive at a true and just
9 verdict.

10 If you have a reasonable doubt as to a defendant's
11 guilt, you should not hesitate for any reason to find a verdict
12 of not guilty. But on the other hand, if you should find that
13 the government has met its burden of proving the defendant's
14 guilt beyond a reasonable doubt, you should not hesitate
15 because of sympathy or any other reason to render a verdict of
16 guilty. Conduct of counsel it is the duty of the attorney for
17 each side of a case to object when the other side offers
18 testimony or other evidence which the attorney believes is not
19 properly admissible. Counsel also have the right and duty to
20 ask the Court to make rulings of law and to request conferences
21 at the side bar out of the hearing of the jury. All those
22 questions of law must be decided by me, the Court. You should
23 not show any prejudice against an attorney or his client
24 because the attorney objected to the admissibility of evidence,
25 or asked for a conference out of the hearing of the jury or

I9DAAPOL4

Jury Charge

1 asked the Court for a ruling on the law. As I already
2 indicated, my rulings on the admissibility of evidence do not
3 indicate any opinion about the weight or effect of such
4 evidence. You are the sole judges of the credibility of all
5 witnesses and the weight and effect of all evidence.

6 You do not have to accept the testimony of any witness
7 who has not been contradicted or impeached, if you find the
8 witness not to be credible. You also have to decide which
9 witnesses to believe and which facts are true. To do this you
10 must look at all the evidence, drawing upon your own common
11 sense and personal experience.

12 In a moment, I will discuss the criteria for
13 evaluating credibility. For the moment, however, you should
14 keep in mind that the burden of proof is always on the
15 government and the defendant is not required to call any
16 witnesses or offer any evidence, since he is presumed to be
17 innocent.

18 There are two types of evidence which you may properly
19 use in deciding whether a defendant is guilty or not guilty.
20 One type of evidence is called direct evidence. Direct
21 evidence is where a witness testifies to what he saw, heard or
22 observed. In other words, when a witness testified about what
23 is known to him of his own knowledge by virtue of his own
24 senses, what he sees, feels, touches or hears. That is called
25 direct evidence.

I9DAAPOL4

Jury Charge

1 Circumstantial evidence is evidence which tends to
2 prove a disputed fact by proof of other facts. There is a
3 simple example of circumstantial evidence which is often used
4 in this courthouse.

5 Assume that when you came into the courthouse this
6 morning the sun was shining and it was a nice day. Assume that
7 the courtroom blinds were drawn and you could not look outside.
8 As you were sitting here, someone walked in with an umbrella
9 which was dripping wet. Somebody else then walked in with a
10 raincoat which also was dripping wet.

11 Now, you cannot look outside of the courtroom and you
12 cannot see whether or not it is raining, so you have no direct
13 evidence of that fact but on the combination of facts which I
14 have asked you to assume, it would be reasonable and logical
15 for you to conclude that it had been raining. That is all
16 there is to circumstantial evidence. You infer on the basis of
17 reason and experience and common sense from an established
18 fact the existence or the nonexistence of some other fact.

19 Circumstantial evidence is of no less value than
20 direct evidence. It is a general rule that the law makes no
21 distinction between direct and circumstantial evidence, but
22 simply requires that before convicting a defendant, the jury
23 must be satisfied of the defendant's guilt beyond a reasonable
24 doubt from all of the evidence in the case.

25 During the trial the attorneys have asked you to infer

I9DAAPOL4

Jury Charge

1 on the basis of your reason, experience and common sense, from
2 one or more established facts, the existence of some other
3 facts. An inference is not a suspicion or a guess. It is a
4 reasoned, logical decision to conclude that a disputed fact
5 exists on the basis of another fact which you know exists.
6 There are times when different inferences may be drawn from
7 facts, whether proved by direct or circumstantial evidence.
8 The government asks you to draw one set of inferences, while
9 the defense asks you to draw another. It is for you and you
10 alone, to decide what inferences you will draw. The process of
11 drawing inferences from facts in evidence is not a matter of
12 guesswork or speculation. An inference is a deduction or
13 conclusion which you, the jury, are permitted to draw but not
14 required to draw from the facts which have been established by
15 either direct or circumstantial evidence.

16 In drawing inferences, you should exercise your common
17 sense. So while you are considering the evidence presented to
18 you, you are permitted to draw, from the facts which you find
19 to be proven, such reasonable inferences as would be justified
20 in light of your experience.

21 Here again, let me remind you that whether based upon
22 direct or circumstantial evidence or upon the logical
23 reasonable inferences drawn from such evidence, you must be
24 satisfied of the guilt of the defendant beyond a reasonable
25 doubt before you may convict.

I9DAAPOL4

Jury Charge

1 You have had an opportunity to observe all of the
2 witnesses. It is now your job to decide how believable each
3 witness was in his or her testimony. You are the sole judges
4 of the credibility of each witness and of the importance of his
5 or her testimony. You will now have to decide where the truth
6 lies. An important part of that decision will involve making
7 judgments about the testimony of the witnesses you have
8 listened to and observed. In making those judgments, you
9 should carefully scrutinize all of the testimony of each
10 witness, the circumstances under which each witness testified
11 and any other matter in evidence which may help you to decide
12 the truth and the importance of each witness' testimony.

13 Your decision whether or not to believe a witness may
14 depend on how that witness impressed you. Was the witness
15 candid, frank and forthright? Or, did the witness seem as if
16 he or she was hiding something, being evasive or suspect in
17 some way? How did the way the witness testified on direct
18 examination compare with the way the witness testified on
19 cross-examination? Was the witness consistent in his testimony
20 or did he contradict himself? Did the witness appear to know
21 what he or she was talking about and did the witness strike you
22 as someone who was trying to report his or her knowledge
23 accurately? How much you choose to believe a witness may be
24 influenced by the witness' bias. Does the witness have a
25 relationship with the government or the defendant which may

I9DAAPOL4

Jury Charge

1 affect how he or she testified? Does the witness have some
2 incentive, loyalty or motive that might cause him or her to
3 shade the truth? Or does the witness have some bias, prejudice
4 or hostility that may have caused the witness consciously or
5 not to give you something other than a completely accurate
6 account of the facts he testified to?

7 Even if the witness was impartial, you should consider
8 whether the witness had an opportunity to observe the facts he
9 or she testified about. And you should also consider the
10 witness' ability to express himself or herself. Ask yourselves
11 whether the witness' recollection of the facts stand up in
12 light of all other evidence.

13 In other words, what you must try to do in deciding
14 credibility is to size a person up in light of his or her
15 demeanor, the explanations given, and in light of all the other
16 evidence in the case, just as you would in any important matter
17 where you are trying to decide if a person is truthful,
18 straightforward and accurate in his or her recollection.

19 In deciding the question of credibility, remember that
20 you should use your common sense, your good judgment, and your
21 experience. Interest in the outcome in evaluating credibility
22 of the witnesses, you should take into account any evidence
23 that the witness who testified may benefit in some way from the
24 outcome of this case. Such an interest in the outcome creates
25 a motive to testify falsely and may sway the witness to testify

I9DAAPOL4

Jury Charge

1 in a way that advances his own interests. Therefore, if you
2 find that any witness whose testimony you are considering may
3 have an interest in the outcome of this trial, then you should
4 bear that factor in mind when evaluating the credibility of his
5 or her testimony and accept it with great care.

6 This is not to suggest that every witness who has an
7 interest in the outcome of a case will testify falsely. It is
8 for you to decide to what extent, if at all, the witness
9 interest has affected or colored his or her testimony.

10 You have heard the testimony of law enforcement
11 officials. The fact that a witness may be employed as a law
12 enforcement official does not mean that his or her testimony is
13 necessarily deserving of more or less consideration or greater
14 or lesser weight than that of an ordinary witness. At the same
15 time, it is quite legitimate for defense counsel to attack the
16 credibility of a law enforcement witness on the grounds that
17 his or her testimony may be colored by a personal or
18 professional interest in the outcome of the case.

19 It is your decision, after reviewing all the evidence,
20 whether to accept the testimony of the law enforcement witness
21 and to give to that testimony whatever weight, if any, you find
22 it deserves.

23 You have heard testimony from a cooperating witness
24 who pled guilty to criminal charges against him. The law
25 allows the use of cooperating witness testimony and such

I9DAAPOL4

Jury Charge

1 testimony is properly considered by the jury. the testimony of
2 a cooperating witness may be enough in itself to support a
3 conviction if the jury finds that the testimony established
4 guilt beyond a reasonable doubt. It is also the case that
5 cooperating witness testimony must be scrutinized with great
6 care and viewed with special caution. A cooperating witness
7 may be facing fairly long maximum sentences and hoping for a
8 reduced sentence or to avoid prosecution.

9 The decision of who will be prosecuted is a decision
10 solely within the discretion of the United States Attorney's
11 Office. For a defendant who pleads guilty, the U.S. Attorney's
12 Office decides whether to submit a letter to the sentencing
13 court. And the sentencing court, according to its own
14 determination, decides what sentence to ultimately impose.

15 Because of the possible interest a cooperating witness
16 may have in testifying, let me say a few things that you may
17 want to consider during your deliberations on the subject of
18 cooperating witnesses.

19 The fact that a witness is testifying pursuant to a
20 cooperation agreement should be considered by you as bearing on
21 his or her credibility. It does not follow, however, that
22 simply because a person has admitted participation in one or
23 more crimes, he or she is incapable of giving a truthful
24 version of what happened. However, you should bear in mind
25 that a witness who has entered into such an agreement has an

I9DAAPOL4

Jury Charge

1 interest in this case different than any ordinary witness. A
2 witness who believes that he or she may be able to obtain their
3 own freedom or receive a lighter sentence by giving testimony
4 favorable to the U.S. Attorney, has a motive to testify
5 falsely. Therefore, you must examine that testimony with
6 caution and weigh it with great care. If, after scrutinizing
7 the testimony, you decide to accept it, you may give it
8 whatever weight, if any, you find it deserves.

9 The testimony of a government cooperating witness
10 should be given such weight as it deserves in light of the
11 facts and circumstances before you, taking into account the
12 witness's demeanor and candor, the strength and accuracy of his
13 or her recollection, his or her background, and the extent to
14 which his or her testimony is or is not corroborated by other
15 evidence in the case. You should, of course, consider whether
16 the testimony was motivated by reward or self-interest. You
17 should ask yourself whether the cooperating witnesses would
18 benefit more by lying or by telling the truth. If you believe
19 the witness was motivated by personal gain, consider if the
20 motivation was one that would cause him or her to lie or was it
21 one that would cause him or her to tell the truth and if this
22 motivation colored the testimony. Obviously, you should reject
23 the testimony if you find it was false. If you are satisfied
24 that the testimony is true, you should accept it. You may also
25 accept parts and reject parts of the cooperating witness's or

I9DAAPOL4

Jury Charge

1 of any witness's, testimony.

2 One final note in this regard, it is of no concern of
3 yours why the U.S. Attorney made an agreement with this
4 witness. Your sole concern is to decide whether the witness
5 has given truthful testimony in this case before you. In sum,
6 you should look to all of the evidence in deciding what
7 credence and what weight, if any, you will give to a witness'
8 testimony.

9 In this case, I have permitted certain witnesses to
10 testify as expert witnesses and to express their opinions about
11 matters that are in issue. An expert witness may be permitted
12 to testify to an opinion on those matters about which he or she
13 has special knowledge, skill, experience and training. Such
14 testimony is presented to you on the theory that someone who is
15 experienced and knowledgeable in the field can assist you in
16 understanding the evidence or in reaching an independent
17 decision on the facts.

18 In weighing this opinion testimony, you may consider
19 the witness' qualifications, his or her opinions, the reasons
20 for testifying, as well as all of the other considerations that
21 ordinarily apply when you are deciding whether or not to
22 believe a witness' testimony. You may give the expert
23 testimony whatever weight, if any, you find it deserves in
24 light of all the evidence in this case. You should not,
25 however, accept the testimony of an expert witness merely

I9DAAPOL4

Jury Charge

1 because I allowed the witness to testify as an expert. Nor
2 should you substitute it for your own reason, judgment and
3 common sense. The determination of the facts in this case
4 rests solely with you.

5 You have heard testimony from police officers that
6 evidence was seized during a search of the defendant's car and
7 apartment. I instruct you that a search as described by the
8 officers is an entirely permissible and appropriate law
9 enforcement action and any evidence that you find was
10 discovered and seized during such a search is properly
11 admissible as evidence in this case. Whether you approve or
12 disapprove of any search should not enter into your
13 deliberations. As with any witness, it is entirely your
14 decision as jurors whether and to what extent you credit a
15 police officer's testimony. However, I instruct you that you
16 are to give full consideration to any evidence that you
17 conclude was obtained during a search along with all other
18 evidence in the case because the government's use of such
19 evidence would be entirely lawful.

20 Use of recordings audio and video recordings of
21 conversations have been admitted into evidence. Whether you
22 approve or disapprove of the recording of those conversations
23 may not enter your deliberations. I instruct you that these
24 recordings were made in a lawful manner, that no one's
25 rights were violated and that the government's use of this

I9DAAPOL4

Jury Charge

1 evidence is entirely lawful.

2 You must, therefore, regardless of any personal
3 opinions, give this evidence full consideration along with all
4 the other evidence in the case in determining whether the
5 government has proved beyond a reasonable doubt the guilt of
6 the defendant.

7 In addition, the government has been permitted to hand
8 out typed transcripts which it prepared containing the
9 government's interpretation of what appears on the recordings
10 that have been received as evidence. Those were given to you
11 only as an aid or guide to assist you in listening to the
12 recordings. You alone should make your own interpretation of
13 what appears on the recordings based on what you heard. If you
14 think you heard something differently than what appeared on the
15 transcript, then what you heard is controlling.

16 You have heard evidence during the trial that
17 witnesses may have discussed the facts of the case and their
18 testimony with the lawyers before the witnesses appeared in
19 court. Although you may consider that fact when you are
20 evaluating a witness' credibility, I should tell you that there
21 is nothing either unusual or improper about a witness meeting
22 with lawyers before testifying so that the witness can be aware
23 of the subjects he or she will be questioned about, focus on
24 those subjects and have the opportunity to review relevant
25 exhibits before being questioned about them in court. Such

I9DAAPOL4

Jury Charge

1 consultation helps conserve your time and the Court's time. In
2 fact, it would be unusual for a lawyer to call a witness
3 without such consultation.

4 Again, the weight you give to the fact or nature of
5 the witness' preparation for his or her testimony and what
6 inferences you draw from such preparation, are matters
7 completely within your discretion.

8 The question of possible punishment of the defendant
9 is of no concern to the jury and should not in any sense enter
10 into or influence your deliberations. The duty of imposing
11 sentence rests exclusively upon the Court. Your function is to
12 weigh the evidence in the case and to determine whether or not
13 the defendant is guilty beyond a reasonable doubt, solely upon
14 the basis of such evidence. Under your oath as jurors, you
15 cannot allow a consideration of the punishment which may be
16 imposed upon the defendant, if he is convicted, to influence
17 your verdict, in any way, or in any sense, enter into your
18 deliberations.

19 The defendant did not testify in this case. Under our
20 constitution he has no obligation to testify or to present any
21 other evidence because it is the prosecution's burden to prove
22 the defendant guilty beyond a reasonable doubt. That burden
23 remains with the prosecution throughout the entire trial and
24 never shifts to the defendant. The defendant is never required
25 to prove that he is innocent. You may not attach any

I9DAAPOL4

Jury Charge

1 significance to the fact that the defendant did not testify.
2 No adverse inference against him may be drawn by you because he
3 did not take the witness stand. You may not consider this
4 against the defendant in any way in your deliberations in the
5 jury room.

6 Although the defendant has been indicted, you must
7 remember that an indictment is only an accusation. It is not
8 evidence. The defendant has pled not guilty to that
9 indictment. Also, the fact that the defendant was arrested and
10 held in federal custody is not evidence of his guilt.

11 As a result of the defendant's plea of not guilty, the
12 burden is on the prosecution to prove guilt beyond a reasonable
13 doubt. This burden never shifts to a defendant for the simple
14 reason that the law never imposes upon a defendant in a
15 criminal case the burden or duty of calling any witness or
16 producing any evidence. The law presumes the defendant to be
17 innocent of all the charges against him. I therefore, instruct
18 you that the defendant is to be presumed by you to be innocent
19 throughout your deliberations until such time, if ever, you as
20 a jury are satisfied that the government has proven him guilty
21 beyond a reasonable doubt.

22 The defendant begins the trial here with a clean
23 slate. This presumption of innocence alone is sufficient to
24 acquit a defendant unless you as jurors are unanimously
25 convinced beyond a reasonable doubt of his guilt, after a

I9DAAPOL4

Jury Charge

1 careful and impartial consideration of all of the evidence in
2 this case.

3 If the government fails to sustain its burden, you
4 must find the defendant not guilty. This presumption was with
5 the defendant when the trial began and remains with him even
6 now as I speak to you and will continue with the defendant into
7 your deliberations unless and until you are convinced that the
8 government has proven his guilt beyond a reasonable doubt.

9 I have said that the government must prove the
10 defendant guilty beyond a reasonable doubt. The question
11 naturally is, what is a reasonable doubt? The words almost
12 define themselves. It is a doubt based upon reason and common
13 sense. It is a doubt that a reasonable person has after
14 carefully weighing all of the evidence. It is a doubt which
15 would cause a reasonable person to hesitate to act in a matter
16 of importance in his or her personal life. Proof beyond a
17 reasonable doubt must, therefore, be proof of such a convincing
18 character that a reasonable person would not hesitate to rely
19 and act upon it in the most important of his or her own
20 affairs. A reasonable doubt is not a caprice or whim. It is
21 not a speculation or suspicion. it is not an excuse to avoid
22 the performance of an unpleasant duty and it is not sympathy.

23 In a criminal case, the burden is at all times upon
24 the government to prove guilt beyond a reasonable doubt. The
25 law does not require that the government prove guilt beyond all

I9DAAPOL4

Jury Charge

1 possible doubt. Proof beyond a reasonable doubt is sufficient
2 to convict. This burden never shifts to the defendant, which
3 means that it is always the government's burden to prove each
4 of the elements of the crimes charged beyond a reasonable
5 doubt.

6 If, after fair and impartial consideration of all of
7 the evidence you have a reasonable doubt, it is your duty to
8 acquit the defendant. On the other hand, if after fair and
9 impartial consideration of all the evidence you are satisfied
10 of the defendant's guilt beyond a reasonable doubt, you should
11 vote to convict.

12 With these preliminary instructions in mind, let us
13 turn to the charges against the defendant, as contained in the
14 indictment.

15 Each of the counts in the indictment constitutes a
16 separate offense or crime. You must consider each count of the
17 indictment separately and you must return a separate verdict on
18 each count in which the defendant is charged.

19 Count One of the indictment charges that the defendant
20 conspired with others that is, agreed with others between in or
21 about 2013 through in or about 2017, to distribute and to
22 possess with intent to distribute: (1) 280 grams and more of
23 cocaine base, commonly referred to as "crack cocaine"; and (2)
24 a quantity of marijuana. Conspiracy generally a conspiracy is
25 a kind of criminal partnership, a combination or agreement of

I9DAAPOL4

Jury Charge

1 two or more persons to join together to accomplish some
2 unlawful purpose.

3 The crime of conspiracy is separate and distinct from
4 the actual violation of any specific federal laws, which the
5 law refers to as "substantive crimes." indeed, you may find a
6 defendant guilty of the crime of conspiracy even though the
7 substantive crime which was the object of the conspiracy was
8 not actually committed. Congress has deemed it appropriate to
9 make conspiracy, standing alone, is a separate crime, even if
10 the conspiracy is not successful.

11 The government must prove beyond a reasonable doubt
12 the following two elements:

13 First, the existence of the conspiracy as charged in
14 the indictment; in other words, that there was, in fact, an
15 unlawful agreement or understanding by two or more persons to
16 violate the narcotics laws as alleged.

17 Second, that the defendant knowingly became a member
18 of the particular conspiracy charged; that is, that he
19 knowingly associated himself with the conspiracy, and
20 participated in that conspiracy.

21 The first element which the government must prove
22 beyond a reasonable doubt to establish the offense of
23 conspiracy is that two or more persons entered the unlawful
24 agreement as charged in the indictment. In order for the
25 government to satisfy this element, you need not find that the

I9DAAPOL4

Jury Charge

1 alleged members of the conspiracy met together and entered into
2 any express or formal agreement. Similarly, you need not find
3 that the alleged conspirators stated, in words or writing, what
4 the scheme was, its object or purpose, or every precise detail
5 of the scheme or the means by which its object or purpose was
6 to be accomplished. What the government must prove is that
7 there was a mutual understanding, either spoken or unspoken,
8 between two or more people to cooperate with each other to
9 accomplish an unlawful act.

10 You may, of course, find that the existence of an
11 agreement to disobey or disregard the law has been established
12 by direct proof. However, since conspiracy is, by its very
13 nature, characterized by secrecy, you may also infer its
14 existence from the circumstances of this case and the conduct
15 of the parties involved.

16 In a very real sense, then, in the context of
17 conspiracy cases, actions often speak louder than words. In
18 this regard, you may, in determining whether an agreement
19 existed here, consider the actions and statements of all of
20 those you find to be participants as proof that a common design
21 existed on the part of the persons charged to act together to
22 accomplish an unlawful purpose.

23 The unlawful agreement as charged in Count One or
24 object of the conspiracy, is to distribute and possess with the
25 intent to distribute crack cocaine and marijuana.

I9DAAPOL4

Jury Charge

1 In order to prove this charge against the defendant,
2 the government must establish beyond a reasonable doubt that
3 the unlawful agreement to possess and distribute narcotics was
4 an object of the conspiracy in which the defendant
5 participated.

6 Now I have used the terms "distribution" and
7 "possession with the intent to distribute." What do those
8 terms mean? I begin with the term "distribution."

9 The word "distribution" means the actual,
10 constructive, or attempted transfer of a controlled substance.
11 to distribute simply means to deliver, to pass over, to hand
12 over something to another person, or to cause it to be
13 delivered, passed on, or handed over to another. Distribution
14 does not require a sale.

15 What does "possession with intent to distribute" mean?
16 I will first discuss the concept of "possession," and then
17 discuss the concept of "intent to distribute."

18 To "possess" means to have something within a person's
19 control. This does not necessarily mean that the defendant
20 must hold it physically, that is, have actual possession of it.
21 As long as the item is within the defendant's control, he
22 possesses it. If you find that the defendant either had actual
23 possession of the item or that he had the power and intention
24 to exercise control over it, even though it was not in his
25 physical possession, you may find that the government has

I9DAAPOL4

Jury Charge

1 proven possession.

2 Actual possession is what most of us think of as
3 possession. That is, having physical custody or control of an
4 item. For example, if you find that the defendant had the
5 drugs on his person, you may find that he had possession of the
6 drugs. However, a person need not have actual physical custody
7 of an item in order to be in legal possession of it. If an
8 individual has the ability and intent to exercise substantial
9 control over an item that he does not have in his physical
10 custody, then he is in possession of that item.

11 The law also recognizes that possession may be sole or
12 joint. If one person alone possesses it, that is sole
13 possession. However, it is possible that more than one person
14 may have the power and intention to exercise control over the
15 item. This is called "joint possession". If you find that the
16 defendant had such power and intention, then he possessed the
17 item under this element even if he possessed it jointly with
18 another.

19 Proof of ownership of the item is not required. To
20 satisfy this element, you must also find that the defendant
21 knowingly possessed the item. This means that he possessed the
22 item purposely and voluntarily and not by accident or mistake.
23 However, the government is not required to prove that the
24 defendant knew that he was breaking the law. That is what is
25 meant by "possession."

I9DAAPOL4

Jury Charge

1 In order to prove "possession with intent to
2 distribute," the government must prove beyond a reasonable
3 doubt that it was a goal of the conspiracy to possess a
4 controlled substance with a purpose to transfer it to another
5 person.

6 Finally, I instruct you that, as a matter of law,
7 cocaine base and marijuana are all "controlled substances."
8 The second element which the government must prove beyond a
9 reasonable doubt to establish the offense of conspiracy is that
10 the defendant knowingly, willfully, and voluntarily became a
11 member of the conspiracy. If you are satisfied that the
12 conspiracy charged in the indictment existed, you must next ask
13 yourselves who the members of that conspiracy were. In
14 deciding whether the defendant whom you are considering was, in
15 fact, a member of the conspiracy, you should consider whether
16 the defendant knowingly and willfully joined the conspiracy.
17 Did he participate in it with knowledge of its unlawful purpose
18 and with the specific intention of furthering its business or
19 objective as an associate or worker?

20 In that regard, it has been said that in order for a
21 defendant to be deemed a participant in a conspiracy, he must
22 have had a stake in the venture or its outcome. You are
23 instructed that, while proof of a financial interest in the
24 outcome of a scheme is not essential, if you find that the
25 defendant had such an interest, that is a factor which you may

I9DAAPOL4

Jury Charge

1 properly consider in determining whether or not the defendant
2 was a member of the conspiracy charged in the indictment.

3 As I mentioned a moment ago, before the defendant can
4 be found to have been a conspirator, you must first find that
5 he knowingly joined in the unlawful agreement or plan. The key
6 question, therefore, is whether the defendant joined the
7 conspiracy with an awareness of at least some of the basic aims
8 and purposes of the unlawful agreement. It is important for
9 you to note that the defendant's participation in the
10 conspiracy may be established by independent evidence of his
11 own acts or statements, as well as those of the other alleged
12 co-conspirators, and the reasonable inferences which may be
13 drawn from them.

14 The defendant's knowledge is a matter of inference
15 from the facts proved. In that connection, I instruct you that
16 to become a member of the conspiracy, the defendant need not
17 have known the identities of each and every other member, nor
18 need he have been apprized of all of their activities.

19 Moreover, the defendant need not have been fully
20 informed as to all of the details or the scope of the
21 conspiracy in order to justify an inference of knowledge on his
22 part. Furthermore, the defendant need not have joined in all
23 of the conspiracy's unlawful objectives. The extent of a
24 defendant's participation has no bearing on the issue of a
25 defendant's guilt. A conspirator's liability is not measured

I9DAAPOL4

Jury Charge

1 by the extent or duration of his participation. The defendant
2 need not be a member of the conspiracy for the entire time that
3 it exists. Indeed, each member may perform separate and
4 distinct acts and may perform them at different times. Some
5 conspirators play major roles, while others play minor parts in
6 the scheme. An equal role is not what the law requires. in
7 fact, even a single act may be sufficient to draw the defendant
8 within the ambit of the conspiracy.

9 I want to caution you, however, that the defendant's
10 mere presence at the scene of the alleged crime does not by
11 itself make him a member of the conspiracy. Similarly, mere
12 association with one or more members of the conspiracy does not
13 automatically make the defendant a member. A person may know,
14 or be friendly with, a criminal, without being a criminal
15 himself. Mere similarity of conduct or the fact that they may
16 have assembled together and discussed common aims and interests
17 does not necessarily establish membership in the conspiracy.

18 I also want to caution you that mere knowledge or
19 acquiescence, without participation, in the unlawful plan is
20 not sufficient. Moreover, the fact that the acts of a
21 defendant, without knowledge, merely happen to further the
22 purposes or objectives of the conspiracy, does not make the
23 defendant a member. More is required under the law. what is
24 necessary is that the defendant must have participated with
25 knowledge of at least some of the purposes or objectives of the

I9DAAPOL4

Jury Charge

1 conspiracy and with the intention of aiding in the
2 accomplishment of those unlawful ends.

3 In sum, the defendant, with an understanding of the
4 unlawful character of the conspiracy, must have intentionally
5 engaged, advised, or assisted in it for the purpose of
6 furthering the illegal undertaking. He thereby becomes a
7 knowing and willing participant in the unlawful agreement, that
8 is to say, a conspirator.

9 a final note on "quantity" if, and only if, you
10 conclude that the government has proved beyond a reasonable
11 doubt that the defendant is guilty of participating in the
12 conspiracy charged in count one, you must then determine the
13 quantity of the controlled substances involved. You need not
14 determine the precise quantity. Instead, if you reach the
15 question of quantity, the verdict form you will receive will
16 contain a separate question asking whether the government has
17 proved beyond a reasonable doubt that the conspiracy that the
18 defendant joined involved 280 grams or more of crack cocaine,
19 28 grams or more of crack cocaine or a lesser amount. Your
20 finding on quantity must be unanimous in the sense that all of
21 you must agree that the conspiracy involved at least the
22 quantity you indicate.

23 Thus, for example, if all of you agree that the
24 conspiracy involved 280 grams or more of mixtures and
25 substances containing a detectable amount of crack cocaine, you

I9DAAPOL4

Jury Charge

1 should indicate that on the verdict form. If, however, some of
2 you conclude that the conspiracy involved 28 grams or more of
3 crack cocaine, but the rest of you conclude that it involved
4 280 grams or more of crack cocaine, you must indicate 28 grams
5 or more of crack cocaine on the verdict form, because all of
6 you would only be in agreement that the conspiracy involved 28
7 grams or more of crack cocaine. If you conclude that the
8 government has not proved beyond a reasonable doubt that the
9 conspiracy involved at least 28 grams of crack cocaine, then
10 you may also indicate that on the verdict form.

11 In making your determination about the quantity of
12 controlled substances involved in the conspiracy charged in
13 count one, you should include whatever quantity was involved in
14 any act or acts in which the defendant personally and directly
15 participated. That is, if you find that the defendant
16 personally and directly participated in jointly undertaken drug
17 trafficking, he is personally responsible for the full quantity
18 of drugs involved that were reasonably foreseeable to him. In
19 addition, each conspirator is also responsible for any quantity
20 of narcotics distributed by his coconspirators, as long as the
21 quantities were known, or reasonably foreseeable, to him, and
22 were within the scope of the charged conspiracy.

23 "Reasonably foreseeable" means that the defendant
24 could have reasonably anticipated the type and quantity of
25 drugs involved in the conspiracy. This is so because when

I9DAAPOL4

Jury Charge

1 people enter into a conspiracy to accomplish an unlawful end,
2 they become agents or partners of one another in carrying out
3 the conspiracy. In determining the factual issues before you,
4 you may consider against the defendant any acts or statements
5 made by any of the people who you find, under the standards I
6 have already described, to have been his co-conspirators, even
7 though such acts or statements were not made in his presence,
8 or were made without his knowledge.

9 If you conclude that the government has proven beyond
10 a reasonable doubt that the conspiracy charged in count one
11 existed, you must next determine the second question, which is
12 whether the defendant participated in the conspiracy with
13 knowledge of its unlawful purpose and in furtherance of its
14 unlawful objective.

15 As you can see, this element concerns a defendant's
16 state of mind.

17 Direct proof of state of mind is not always available.
18 Indeed, it would be a rare case where it could be shown that a
19 person wrote or stated that, as of a given time in the past, he
20 committed an act with a certain state of mind. such direct
21 proof is not required.

22 You have been instructed that in order to sustain its
23 burden of proof, the government must prove that the defendant
24 acted knowingly. A person acts knowingly if he acts
25 intentionally and voluntarily, and not because of ignorance,

I9DAAPOL4

Jury Charge

1 mistake, accident, or carelessness. whether the defendant acted
2 knowingly may be proven by the defendant's conduct and by all
3 of the facts and circumstances surrounding the case.

4 The government must also prove beyond a reasonable
5 doubt that the defendant acted intentionally. Before you can
6 find that the defendant acted intentionally, you must be
7 satisfied beyond a reasonable doubt that the defendant acted
8 deliberately and purposefully. That is, defendant's acts must
9 have been the product of defendant's conscious objective rather
10 than the product of a mistake or accident. The ultimate facts
11 of knowledge and criminal intent, though subjective, may be
12 established by circumstantial evidence, based upon a person's
13 outward manifestations, words, conduct, acts, and all the
14 surrounding circumstances disclosed by the evidence and the
15 rational or logical inferences that may be drawn therefrom.

16 What is referred to as "drawing inferences from
17 circumstantial evidence" is no different from what people
18 normally mean when they say, "use your common sense." Using
19 your common sense means that, when you come to decide, for
20 example, whether the defendant possessed narcotics with an
21 intent to distribute, you don't limit yourself to just what he
22 said, but you also look at what he did and what others did in
23 relation to him and, in general, everything that occurred.

24 As I have instructed you, circumstantial evidence, if
25 believed, is of no less value than direct evidence. in either

I9DAAPOL4

Jury Charge

1 case, the essential elements of the crime charged must be
2 established beyond a reasonable doubt. It is not necessary
3 that a defendant join a conspiracy at its inception or be fully
4 informed as to all the details of the conspiracy to justify an
5 inference of knowledge on his part. to have guilty knowledge, a
6 defendant need not have known the full extent of the conspiracy
7 or all of its activities or all of its participants. It is not
8 even necessary that the defendant know every other member of
9 the conspiracy. in fact, a defendant may know only one other
10 member of the conspiracy and still be a coconspirator. Nor is
11 it necessary that a defendant receive any monetary benefit from
12 participating in the conspiracy or have a financial stake in
13 the outcome, so long as he in fact participated in the
14 conspiracy in the manner I have explained.

15 I now want to turn your attention to the offense
16 charged in Count Two of the indictment and instruct you on the
17 elements of that offense. Count Two charges the defendant with
18 the crime of possessing with intent to distribute a controlled
19 substance on or about February 3, 2017.

20 In order to prove the defendant guilty of Count Two,
21 the government must prove each of the following elements beyond
22 a reasonable doubt:

23 1. On or about February 3, 2017, the defendant
24 possessed crack cocaine with the intent to distribute it;

25 2. The defendant did so intentionally and knowingly

I9DAAPOL4

Jury Charge

1 as I have already defined those terms.

2 3. I now want to turn your attention to the firearms
3 offense charged in Count Three of the indictment and instruct
4 you on the elements of that offense.

5 It is a violation of federal law for any person,
6 "during and in relation to any drug trafficking crime to use or
7 carry a firearm," or, "in furtherance of any such crime, to
8 possess a firearm."

9 Count Three charges Terrell Polk as follows:

10 "From at least in or about 2013 through in or about
11 2017, in the Southern District of New York and elsewhere,
12 Terrell Polk, the defendant, during and in relation to a
13 federal narcotics trafficking crime, namely, the narcotics
14 conspiracy charged in Count One of this indictment, knowingly
15 did use and carry firearms, and, in furtherance of such crime,
16 did possess firearms, and did aid and abet the use, carrying,
17 and possession of firearms, some of which were discharged."

18 In order to prove the defendant guilty of Count Three,
19 the government must prove each of the following elements beyond
20 a reasonable doubt:

21 1. The defendant committed a drug trafficking crime
22 as charged in count One;

23 2. On or about the dates alleged the indictment, the
24 defendant used and carried a firearm during and in relation to
25 the specified drug trafficking conspiracy charged in Count One,

I9DAAPOL4

Jury Charge

1 or that the defendant possessed a firearm in furtherance of the
2 specified drug trafficking conspiracy charged in Count One;

3 3. The defendant acted knowingly.

4 As I will explain in a few minutes, if you find that
5 the government has satisfied its burden as to each of these
6 elements, then you must also determine whether the government
7 has proved beyond a reasonable doubt that the defendant
8 discharged the firearm.

9 The first element the government must prove beyond a
10 reasonable doubt is that the defendant committed a federal drug
11 trafficking crime. The defendant is charged in Count One of
12 the indictment with conspiracy to distribute and possess with
13 intent to distribute a controlled substance.

14 The second element the government must prove beyond a
15 reasonable doubt for Count Three is that the defendant either
16 used and carried a firearm during and in relation to the drug
17 trafficking crime charged in Count One, or that he possessed a
18 firearm in furtherance of that drug trafficking crime.

19 As I have explained, to meet its burden as to Count
20 Three, the government must prove the second element of count
21 three in either one of two ways.

22 first, the government may prove beyond a reasonable
23 doubt that the defendant "used" or "carried" a firearm "during
24 and in relation to" the drug trafficking offense.

25 A. In order to prove that the defendant used the

I9DAAPOL4

Jury Charge

1 firearm, the government must prove beyond a reasonable doubt an
2 active employment of the firearm by the defendant during and in
3 relation to the commission of the drug trafficking crime. This
4 does not mean that the defendant must actually fire or attempt
5 to fire the weapon. Although, those would obviously constitute
6 use of the weapon. Brandishing, displaying, or even referring
7 to the weapon so that others present knew that the defendant
8 had the firearm available if needed all constitute use of the
9 firearm.

10 B. Carry in order to prove that the defendant carried
11 the firearm, the government must prove beyond a reasonable
12 doubt that the defendant had the weapon within his control so
13 that it was available in such a way that it furthered the
14 commission of the crime.

15 C. A firearm is carried "in relation to" a drug
16 trafficking offense if the firearm had some purpose or effect
17 with respect to the drug crime. That requirement is satisfied
18 if the firearm facilitated or had the potential to facilitate,
19 the drug trafficking offense.

20 On the other hand, this requirement is not satisfied
21 if the carrying of the firearm was entirely unrelated to the
22 drug crime.

23 As I have explained, the government may also establish
24 the second element of Count Three by proving that the defendant
25 possessed the firearm in furtherance of the drug trafficking

I9DAAPOL4

Jury Charge

1 crime.

2 A. "in furtherance" to possess a firearm "in
3 furtherance" of a narcotics crime means that the firearm helped
4 promote, accomplish, advance or achieve the goal or objective
5 of the underlying offense. The mere presence of a firearm at
6 the scene of drug trafficking is not enough. The firearm must
7 have had some nexus or link to the drug trafficking crime, that
8 is, some purpose or effect, with respect to the underlying drug
9 offense, such as where the firearm is readily accessible to
10 protect drugs, drug proceeds, or the drug dealer himself.

11 Count Three. If you find the defendant guilty on
12 Count Three, then you must then make an additional finding:
13 Whether the government has proven beyond a reasonable doubt
14 that the defendant "discharged" the firearm.

15 There is a place on the verdict form in which to
16 record your determinations. The jury must be unanimous as to
17 whether the firearm was discharged. The term "discharge" means
18 to fire or shoot.

19 Count Four. I now want to turn your attention to the
20 offense charged in the fourth and final count of the
21 indictment. It is a violation of federal law for any person
22 "who has been convicted in any court of, a crime punishable by
23 imprisonment for a term exceeding one year to possess in or
24 affecting commerce, any ammunition, or to receive any
25 ammunition which has been shipped or transported in interstate

I9DAAPOL4

Jury Charge

1 or foreign commerce."

2 Count Four of the indictment charges as follows:

3 "On or about July 25, 2015, in the Southern District
4 of New York and elsewhere, Terrell Polk, the defendant, after
5 having been convicted in a court of a crime punishable by
6 imprisonment for a term exceeding one year, knowingly did
7 possess in and affecting commerce ammunition, which had
8 previously been shipped and transported in interstate and
9 foreign commerce.

10 In order to prove the defendant guilty of Count Four,
11 the government must prove each of the following elements beyond
12 a reasonable doubt:

13 1. The defendant previously was convicted of a crime
14 punishable by imprisonment for a term exceeding one year, or in
15 other words, a felony;

16 2. On or about the dates specified in the indictment,
17 the defendant knowingly possessed ammunition;

18 3. the defendant's possession of the ammunition was in
19 or affecting interstate or foreign commerce.

20 Element one - prior felony conviction to satisfy the
21 first element, you need to find beyond a reasonable doubt that
22 the defendant was, in fact, convicted of a felony and that the
23 conviction was prior to the possession of the ammunition as
24 charged in the indictment.

25 The government need not prove that the defendant knew

I9DAAPOL4

Jury Charge

1 that his prior conviction was punishable by a term of
2 imprisonment for a term exceeding one year, nor is it necessary
3 for the defendant to have been sentenced to imprisonment for
4 more than one year.

5 I instruct you that the prior conviction that is an
6 element of the offense is only to be considered by you for the
7 fact that it exists and nothing else. You are not to consider
8 it for any other purpose. You may not consider the prior
9 conviction in deciding whether the defendant was in knowing
10 possession of the ammunition as charged in the indictment.

11 Element two - knowing possession the second element
12 that the government must prove beyond a reasonable doubt is
13 that, on or about July 25, 2015, the defendant knowingly
14 possessed ammunition.

15 Element Three - firearm in or affecting commerce the
16 third element that the government must prove beyond a
17 reasonable doubt is that the defendant possessed the ammunition
18 in or affecting interstate or foreign commerce. This means
19 that the government must prove that at some point prior to the
20 defendant's possession, the ammunition crossed a state line or
21 the united states border. For example, if the ammunition came
22 from any other state or country to New York, then it was
23 transported or shipped in interstate commerce.

24 It is not necessary that the government prove that the
25 defendant himself carried it across a state line, nor must the

I9DAAPOL4

Jury Charge

1 government prove who carried it across or how it was
2 transported. It is also not necessary for the government to
3 prove that the defendant knew that the firearm had previously
4 traveled in interstate commerce.

5 In addition, to the elements of each offense, you must
6 consider whether any act in furtherance of the crimes occurred
7 within the Southern District of New York.

8 You are instructed that the Southern District of New
9 York encompasses, among other places, Manhattan and the Bronx.
10 In this regard, the government need not prove that the crimes
11 themselves were committed in this district or that the
12 defendant himself was present here. It is sufficient to
13 satisfy this element if any act in furtherance of the crimes
14 occurred within this district.

15 If you find that the government has failed to prove
16 that any act in furtherance of the crimes occurred within this
17 district then you must acquit.

18 You are about to go into the jury room and begin your
19 deliberations. If during those deliberations you want to see
20 any of the exhibits, they will be sent to you in the jury room
21 upon request. if you want any of the testimony read, that can
22 also be done. But, please remember that it is not always easy
23 to locate what you might want, so be as specific as you
24 possibly can in requesting exhibits or portions of testimony
25 which you may want.

I9DAAPOL4

Jury Charge

1 Your requests for exhibits or testimony, in fact any
2 communication with the court should be made to me in writing,
3 signed by your foreperson and given to one of the marshals. I
4 will respond to any questions or requests you have as promptly
5 as possible, by having you return to the courtroom so I can
6 speak with you in person. In any event, do not tell me or
7 anyone else how the jury stands on the issue of whether or not
8 the defendant's guilt has been proven until after a unanimous
9 verdict is reached. When you have reached a unanimous verdict,
10 just send us a note indicating that you have reached a verdict
11 without telling us what that verdict is.

12 When you get into the jury room, before you begin your
13 deliberations, you should select someone to be the foreperson.
14 the foreperson will be responsible for signing all
15 communication to the Court and for handing them to the marshal
16 during your deliberations. We will take your signed and dated
17 verdict sheet from your foreperson when you return to court,
18 and after your foreperson announces your verdict in open court.

19 Now I'm going to give you the verdict form. It has
20 several questions as describe by the parties and myself. The
21 first question says:

22 How do you find the defendant, Terrell Polk, with
23 respect to the charge of conspiracy to distribute and possess
24 with intent to distribute crack cocaine and marijuana?

25 You either check "not guilty" or the "guilty" box.

I9DAAPOL4

Jury Charge

1 Under that question one is "A":

2 If you find the defendant guilty of Count One of the
3 indictment indicate the quantity of crack cocaine you find the
4 conspiracy involved.

5 The choices are 280 grams or more, 28 grams or more,
6 less than 28 grams.

7 Under Count Two:

8 How do you find the defendant, Terrell Polk, with
9 respect to the charge of possession with the intent to
10 distribute a quantity of crack cocaine on or about February 3,
11 2017?

12 Then as to Count Three:

13 How do you find the defendant, Terrell Polk, with
14 respect to the charge of using and carrying a firearm during
15 and in relation to, or possessing a firearm in furtherance of
16 the narcotics conspiracy?

17 And then under three, you're also asked a question
18 under "A":

19 If you find the defendant guilty of Count Three of the
20 indictment, did the defendant, Terrell Polk, discharge that
21 firearm?

22 And then Count Four the question is:

23 How do you find the defendant, Terrell Polk, with
24 respect to the charge of possession of ammunition on or about
25 July 25, 2015, after having been convicted of a crime

I9DAAPOL4

Jury Charge

1 punishable by imprisonment for a term exceeding one year?

2 Once you have checked the "not guilty" or "guilty"
3 boxes and answered all the questions, your foreperson should
4 sign the verdict sheet and date it and bring it out with you
5 after you send us a separate note saying that you've reached a
6 verdict.

7 The government, in order to prevail, must prove the
8 essential elements of each charge by the required degree of
9 proof, as already explained in these instructions. If it
10 succeeds, your verdict should be guilty; if it fails, it should
11 be not guilty. to report a verdict either guilty or not guilty,
12 it must be unanimous.

13 Your function is to weigh the evidence in the case and
14 determine whether or not the defendant has been proven guilty
15 of the crimes charged.

16 (Continued on next page)

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Charge

1 THE COURT: Each juror is entitled to his or her
2 opinion. Each should, however, exchange views with his or her
3 fellow jurors. That is the very purpose of jury deliberations
4 to discuss and consider the evidence and listen to the
5 arguments of your fellow jurors, to present your individual
6 views and to consult with one another and to reach an agreement
7 based solely and wholly upon the evidence if you can do so
8 without violence to your own individual judgment. Each of you
9 must decide the case for yourself after consideration with your
10 fellow jurors of the evidence in the case.

11 You should not hesitate to change an opinion after
12 discussion with your fellow jurors appears to be erroneous.
13 However, if after carefully considering all the evidence and
14 the arguments of your fellow jurors, you entertain a
15 conscientious view that differs from the others, you are not to
16 yield your position simply because you are outnumbered. Your
17 final voted must reflect your conscientious determination as to
18 how the issues should be decide. Your verdict as I say as a
19 juror, whether guilty or not guilty on each count, must be
20 unanimous.

21 If you do not understand or have forgotten any portion
22 of my instructions, you may request that any portion of my
23 instructions be read back, clarified or explained.

24 Let me see is the lawyers at side bar.

25 (Continued on next page)

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Charge

1 (At the side bar)

2 THE COURT: Other than what we discussed earlier, does
3 the government have any exceptions to the charge?

4 MR. KROUSE: No.

5 THE COURT: Defense?

6 MR. LIND: I have none.

7 THE COURT: I am going to excuse the alternates.

8 MR. KROUSE: Yes, Judge.

9 (Continued on next page)

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Charge

1 THE COURT: First, Mr. Askan and Mr. Campbell, you
2 have 12 jurors ahead of you to begin deliberations. I want to
3 thank you for your service as jurors in this case. Obviously
4 if we lost one of the first 12, we wouldn't have been able to
5 continue without an alternate juror.

6 At this point in time I wanted to thank you for your
7 participation and excuse you from any further jury service at
8 this time. If you have anything in the jury room, you can pick
9 it up. Thank you very much.

10 (Alternates excused)

11 THE COURT: Swear in the marshal.

12 (Marshal sworn)

13 THE COURT: As soon as the other two clear out, ladies
14 and gentlemen, you can retire to begin your deliberations.

15 Ladies and gentlemen, you may now retire to begin your
16 deliberations.

17 (Jury deliberations resumed; time noted 2:28 p.m.)

18 THE COURT: If we get a note for exhibits, we don't
19 have to reconvene as long as you agree on what exhibit is being
20 requested. You can send it straight in. If there is any other
21 note asking for any other questions or instructions from the
22 Court, we will gather together and bring the jury back out.

23 Give us information on how to reach you in 10 minutes
24 so you can get back here.

25 (Recess pending verdict)

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Charge

1 THE COURT: I have a note from the jury that reads:
2 Can we have elements of each count as given by Judge Daniels;
3 and two, can we re-watch video of July 2015?

4 What I handed you are just those portions of the
5 instructions which just have the elements. I propose that I
6 either read it to them again, or I can send in these four
7 pages. Those are the elements of the four counts as I read it
8 to them.

9 MR. LIND: I would think it might be more sensible to
10 send in a copy.

11 THE COURT: I think that is probably what they are
12 asking us to do. I don't want to do that unless you both sides
13 think it is appropriate.

14 MR. KROUSE: The government agrees. We can send in
15 just these.

16 THE COURT: So what I am going to do is these are the
17 four counts with just the elements. I am going to bring them
18 out. We'll play them the video, and then I will have the court
19 officer give them these four pages of the elements of each
20 count.

21 Are we all set with the video?

22 MR. KROUSE: Yes, your Honor. It is all teed up.

23 THE COURT: Let's bring them in.

24 (Continued on next page)
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Charge

1 (In open court; jury present)

2 THE COURT: You can be seated.

3 Ladies and gentlemen, we have your note which reads,
4 Can we have elements of each count as given by Judge Daniels;
5 and two, can we re-watch video of July 2015?

6 We have the video set up. We'll let you watch that.
7 What I am going to do is I put each one of the counts on one
8 page with the elements. I will send that right in to you if
9 that is what you are asking for with the consent of the
10 parties. You will have those. If you want something more in
11 terms of instructions, send us another note.

12 We'll play the video for you and then we'll let you
13 continue your deliberations.

14 (Video played)

15 MR. KROUSE: Your Honor, can we have a brief side bar?

16 THE COURT: You want to cut this off at this point?

17 MR. KROUSE: We have a proposal for your Honor.

18 THE COURT: Are you going to stop it?

19 MR. KROUSE: We paused it for now.

20 THE COURT: Come up.

21 MR. KROUSE: your Honor, it is our fault we should
22 have raised this before the jury came in, but that concludes
23 the shooting aspect this video.

24 THE COURT: Okay.

25 MR. KROUSE: In evidence there is the person Kevin

I9d6pol5

Charge

1 Corbett coming back on the a bike and picking up the shell
2 casings. That is 14 minutes later. We can ask Mr. Concepcion
3 to move it ahead 14 minutes because nothing happens for the
4 next 14 minutes.

5 THE COURT: Okay.

6 MR. KROUSE: Also, the jury's note wasn't entirely
7 clear. There are two different angles, two camera views. We
8 can play the shooting.

9 THE COURT: How long is that?

10 MR. KROUSE: That's a minute.

11 THE COURT: Okay.

12 MR. KROUSE: Our proposal would be to move 14 minutes
13 ahead on this and let them see the other part of the video
14 shown to them at trial, stop it and then load up the second
15 video and play that portion, the one-minute portion.

16 MR. LIND: My suggestion, Judge, would be to ask them
17 if they want to see it. I don't have any problem with them
18 showing the other angle, but I don't think they are asking for
19 the guy picking up the casings.

20 THE COURT: All right. I will ask them.

21 (Continued on next page)

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Charge

1 (In open court; jury present)

2 THE COURT: Ladies and gentlemen, on this video, there
3 is the portion that you saw about the person on the bike coming
4 back. That is 14 minutes later.

5 Do you want us to move it up to that portion?

6 JUROR: Yes, please.

7 THE COURT: Also, there is another video from a
8 different angle that is in evidence. We'll play that for you
9 also. That is about a minute.

10 JUROR: Yes.

11 THE COURT: Why don't we move up about 13 minutes or
12 so and play that portion and then we'll play the other portion.

13 Just tell me what timing you are going up to. From
14 what to what?

15 MR. KROUSE: Your Honor, we're starting at the
16 timestamp 12:34:18.

17 THE COURT: Okay.

18 (Video played)

19 MR. KROUSE: We're stopping the video at 12:35:06 and
20 bringing up Government Exhibit 701 B.

21 We'll move ahead in this video to the 12:22:54, your
22 Honor.

23 (Video played)

24 MR. KROUSE: We're stopping at 12:24:03 and moving
25 ahead to 12:34.

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Charge

1 (Video played)

2 MR. KROUSE: Stopping at 12:35:08, your Honor.

3 THE COURT: Ladies and gentlemen, you can continue
4 your deliberations.

5 (Jury deliberations resumed; time noted: 3:25 p.m.)

6 THE COURT: We'll wait until we get another note.

7 (Recess pending verdict)

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Charge

1 THE COURT: We have a note. They said they want to
2 listen to the phone calls from jail with the transcripts on the
3 monitor. They want to review the video paused at approximately
4 12:23 on View 1 and 12:23 on View 2. In both views we want to
5 see the shooters leaving the scene.

6 And can we have the transcripts of the jail phone
7 calls to review the material in the di liberation room?

8 What does the government have?

9 MR. KROUSE: We have the transcripts here, your Honor,
10 in the folders and we can cue up the recordings and play them
11 for the jury. Everything is prepared. It is just a question
12 of which order you want to go in.

13 THE COURT: I usually go in the order that they ask.

14 Do you have the phone calls with the transcripts on
15 the monitor for them to listen to?

16 MR. KROUSE: We will, your Honor. The same way that
17 we played them during trial. We start with 800 and then just
18 go through all of the ones that we admitted into evidence.

19 THE COURT: Do you know what they are asking for in
20 terms of the video that is keyed up?

21 MR. KROUSE: I think so, your Honor. We have those
22 timestamps that they gave us. I would suggest maybe playing 10
23 seconds before and then play it and try pausing it at the time
24 they are asking for.

25 THE COURT: They want to the see the shooters leaving

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Charge

1 the scene.

2 MR. KROUSE: Yes, your Honor. I think we get the
3 intent and we'll try to satisfy that.

4 THE COURT: What do you want to do with the
5 transcripts?

6 MR. KROUSE: We have them here. We have no objection
7 to sending them back to the jury.

8 THE COURT: Mr. Lind?

9 MR. LIND: I don't have any objection to anything that
10 they have asked for, Judge.

11 THE COURT: Let's start out with bringing them out,
12 put the transcripts on their screens and playing the calls.
13 We'll do video again where they want it. And then we'll send
14 them back in with the transcripts.

15 Let's bring the jury in.

16 I find it a little difficult to read this. Are you
17 sure they can read this?

18 MR. KROUSE: Does that work, your Honor?

19 THE COURT: Yes. That's better.

20 (Continued on next page)
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Charge

1 (In open court; jury present)

2 THE COURT: You can be seated.

3 Ladies and gentlemen, we have your second note. It
4 reads: Can we listen to phone calls from jail with the
5 transcripts on the monitor?

6 We're all set up and do that for you first.

7 Then you say, Can we review the video of July 2015
8 paused at approximately 12:23:37 of View 1 and 12:25 on View 2.
9 I think they have that set up to go afterwards.

10 You say you are particularly interested in both views,
11 that you wanted to see the shooters leaving the scene.

12 Then you ask: Can we have the transcripts of the jail
13 phone calls to review in the jury deliberations room?

14 We're putting those together and we'll send those in
15 when you go back in.

16 Let's go to the phone calls themselves and we'll play
17 those for you first.

18 (Audio played)

19 (Video played)

20 THE COURT: Is that okay?

21 JUROR: Yes.

22 THE COURT: You can continue.

23 (Jury deliberations resumed; time noted: 4:09 p.m.)

24 THE COURT: We'll wait to see if we get another note.
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Charge

1 (Recess pending verdict)

2 THE COURT: We have a note, which reads: Can you
3 please clarify the time frame on the verdict sheet,
4 specifically what is the time frame for Count One A?

5 Before I tell you what I intend, why don't I see how
6 each side wants to proceed.

7 MR. KROUSE: Your Honor, the parties have conferred
8 and I think we're on the same page that the answer should be
9 2013 to 2017.

10 MR. LIND: That's correct, Judge.

11 THE COURT: How do you want me to answer the question?

12 MR. KROUSE: Your Honor, it could be as simple as:
13 The time frame for Count One is in or about 2013 to in or about
14 2017, which is the language that tracks the indictment.

15 MR. LIND: They are only asking for One A.

16 MR. KROUSE: So the time frame for One A is in or
17 about 2013 to in or about 2017.

18 THE COURT: I am willing to do that, but I am not sure
19 that answers the thrust of their question. I think what they
20 are trying to figure out obviously is what drugs would the
21 defendant be responsible for once he joined the conspiracy.

22 What is the government's thought as to the start date?

23 MR. KROUSE: The government's thought is to instruct
24 the jury that it would be March 2014 to February 2017. That
25 will be time frame for One A.

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Charge

1 THE COURT: Mr. Lind.

2 MR. LIND: On reflection, Judge -- and I am glad that
3 you brought up the point that you did -- I think Count Two is a
4 substantive count.

5 THE COURT: No. It is talking about Count One A.

6 MR. LIND: I know. I am talking about 2017.

7 THE COURT: Right.

8 MR. LIND: I don't think that anything past when he
9 goes into jail in August or September of 2015 should count.

10 THE COURT: Well, I don't think that that is
11 technically correct. If you and I were in business together
12 and I went on two weeks' vacation, you cannot say that the two
13 weeks I was on vacation don't count, that we are no longer
14 business partners when I come back from vacation. So I am not
15 sure I agree with that theory.

16 you do see what I am trying to concentrate on. Let me
17 tell you what I have and then we can work from there so we can
18 make sure we're responding appropriately to that.

19 What I intend or propose to say is: The indictment
20 charges a conspiracy from in or about 2013 through in or about
21 2017. Each coconspirator is responsible for any amount of
22 drugs possessed or distributed by all members of the conspiracy
23 that is reasonably foreseeable to him after he joins the
24 conspiracy.

25 MR. KROUSE: Yes, your Honor. That is fine with the

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Charge

1 government.

2 THE COURT: I think that is consistent with the law
3 and the proof.

4 MR. LIND: That's fine, Judge.

5 THE COURT: So it is up to them to figure out what is
6 reasonably foreseeable. If they think that he joined the
7 conspiracy at a time that is consistent with the evidence that
8 they have heard, it is up to them to determine whether or not
9 after he joined that conspiracy what amount of drugs was
10 foreseeable to him that the members of that conspiracy were
11 involved in. That seems to be consistent.

12 MR. LIND: The other problem with that, Judge, is --
13 and that perhaps I should have requested an instruction to
14 this -- after he is in jail for a year and a half, I think he
15 has withdrawn from the conspiracy. I think it is different
16 than when you have business partners.

17 THE COURT: Well, the problem is that there is no
18 evidence in this record that he withdrew from the conspiracy.
19 That argument may have been at least a more colorable argument
20 or stronger argument if in February of 2017 they didn't execute
21 a search warrant for his house and they found a distribution
22 quantities of drugs.

23 So the question is not whether he stopped possessing
24 drugs with the intent to distribute them. The only question at
25 that point is whether he was doing it on his own and doing it

I9d6pol5

Charge

1 in a different conspiracy, and there is no evidence being
2 proffered by the defense or by the government that the drugs
3 that were found in his bedroom were somehow drugs that he was
4 selling with a different group of people.

5 MR. LIND: Or selling them on his own, Judge.

6 THE COURT: Or selling them on his own. It is up to
7 the jury to determine whether he was selling them on his own.

8 See, that doesn't matter because that goes to a
9 different question than they are asking about. They are asking
10 what is the time frame of Count One A. The time frame of Count
11 One A is whatever time period they find that he is a member of
12 the conspiracy between 2013 and 2017. In their view he is out
13 of the conspiracy. I am not sure any evidence supports that or
14 they want to decide that he is not a member of the conspiracy
15 while he is in jail.

16 MR. LIND: I agree with you, Judge. I think, though,
17 it should be 2014 to 2017.

18 THE COURT: I don't have any problem saying after he
19 joined the conspiracy in 2014.

20 MR. LIND: Right. That is what I am saying.

21 THE COURT: If that is what you want me to say.

22 MR. LIND: Right.

23 THE COURT: The only reason I didn't put that in there
24 is that it is a direct reference to your client as opposed to
25 the generic what I said is all members of the conspiracy. Any

I9d6pol5

Charge

1 amount of drugs possessed or distributed by all members of the
2 conspiracy that is reasonably foreseeable to a coconspirator
3 after he joins the conspiracy.

4 MR. LIND: That's bitter.

5 JUROR: The indictment charges a conspiracy from in or
6 about 2013 through in or about 2017. Each coconspirator is
7 responsible for any amount of drugs possessed or distributed by
8 all members of the conspiracy that is reasonably foreseeable to
9 him after he joined the conspiracy.

10 Now, if you want to say after he joined the conspiracy
11 in 2014, obviously that is a specific reference to your client.
12 This is just a generic saying any conspirator wherever they
13 joined the conspiracy they are responsible for whatever amount
14 of drugs that is foreseeable to that coconspirator after he
15 joined the conspiracy.

16 MR. LIND: Judge, I think it is better rather than
17 focusing on my client to give the generic terminology.

18 MR. KROUSE: We agree with that, your Honor.

19 THE COURT: I will read it one more time.

20 The indictment charges a conspiracy from in or about
21 2013 through in or about 2017. Each coconspirator is
22 responsible for any amount of drugs possessed or distributed by
23 all members of the conspiracy that is reasonably foreseeable to
24 him after he joins the conspiracy.

25 MR. LIND: Fine, Judge.

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Charge

1 THE COURT: I will tell them that they can go back and
2 send us a note either immediately or if they want to deliberate
3 further if they think they are close they can deliberate
4 further, but we'll come home if they send us a note and
5 continue tomorrow.

6 Let me bring them out and see if that is responsive to
7 their note.

8 (Continued on next page)

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Charge

1 (In open court; jury present)

2 THE COURT: Ladies and gentlemen, please be seated.

3 Ladies and gentlemen, we have your note. It reads:

4 Can you please clarify the time frame from the verdict sheet,
5 specifically what is the time frame for Count One A?

6 I am going to give you this instruction, and I will
7 read it twice: The indictment charges a conspiracy from in or
8 about 2013 through in or about 2017. Each coconspirator is
9 responsible for any amount of drugs possessed or distributed by
10 all members of the conspiracy that is reasonably foreseeable to
11 him after he joined the conspiracy.

12 I will say it one more time. The indictment charges a
13 conspiracy in or about 2013 through in or about 2017. Each
14 coconspirator is responsible for any amount of drugs possessed
15 or distributed by all members of the conspiracy that is
16 reasonably foreseeable to him after he joins the conspiracy.

17 Now, I am going to let you go back in. If you want to
18 adjourn for the day, give us a note. If you want to deliberate
19 a little longer, we'll wait for you if you think you are close.
20 Otherwise, as soon as you want to go home and come back
21 tomorrow, if that is what you want to do, send us a note and
22 we'll abide by your wishes.

23 I will let you go back in and decide what you want to
24 do.

25 (Jury deliberations resumed; time noted 4:40 p.m.)
(Recess pending verdict)

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Charge

1 THE COURT: I have a note from the jury indicating
2 that they reached a verdict. We'll take them out and take the
3 verdict from the foreperson.

4 (In open court; jury present)

5 THE COURT: You can be seated, ladies and gentlemen.

6 Ladies and gentlemen, we have your note, which
7 indicates that you reached a verdict. I am going to ask my law
8 clerk to take the verdict from the foreperson at this time.

9 THE LAW CLERK: How do you find the defendant, Terrell
10 Polk, with respect to the charge of conspiracy to distribute
11 and possess with intent to distribute crack cocaine and
12 marijuana, guilty or not guilty?

13 THE FOREPERSON: Guilty.

14 THE LAW CLERK: Indicate the quantity of crack cocaine
15 you find the conspiracy involved?

16 THE FOREPERSON: 280 grams or more.

17 THE LAW CLERK: With respect to Count Two how do you
18 find the defendant, Terrell Polk, with respect to the charge of
19 possession with the intent to distribute the quantity of crack
20 cocaine on or about February 3rd, 2017, guilty or not guilty?

21 THE FOREPERSON: Guilty.

22 THE LAW CLERK: With respect to Count Three how do you
23 find the defendant, Terrell Polk, with respect to the charge of
24 using and carrying a firearm during and in relation to or
25 possessing a firearm in furtherance of the narcotics

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Charge

1 conspiracy, guilty or not guilty?

2 THE FOREPERSON: Guilty.

3 THE LAW CLERK: Did the defendant, Terrell Polk,
4 discharge that firearm?

5 THE FOREPERSON: Yes.

6 THE COURT: With respect to Count Four how do you find
7 the defendant, Terrell Polk, with respect to the charge of
8 possession of ammunition on or about July 25th, 2015 after
9 having been convicted of a crime punishable by imprisonment for
10 a term exceeding one year, guilty or not guilty?

11 THE FOREPERSON: Guilty.

12 THE COURT: Ladies and gentlemen, I want to thank you
13 for your jury service. Obviously jury service is one of the
14 most important responsibilities we all have as citizens. Our
15 system could not work unless we had people who were able and
16 willing to serve fairly and impartially. We recognize it can
17 be a major or minor disruption in your professional and
18 personal lives.

19 With the thanks of the Court, I am going to discharge
20 you from any further jury service. Thank you very much.

21 (Jury discharged)

22 THE COURT: I am going to schedule sentencing for
23 January 17th at 10:00.

24 MR. LIND: Fine, Judge.

25 THE COURT: I will see all the parties at that time.

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Charge

1 MR. KROUSE: Thank you.

2 MR. LIND: 5:00, Judge?

3 THE COURT: 10:00.

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Charge

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